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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL:

WITH

CHRONOLOGICAL TABLE, NOTES AND AN INDEX.

From 1885 to 1890, both inclusive.

VOL. V.

SECOND EDITION.

CALCUTTA:
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PREFACE.

THIS, the second edition of Volume V of the General Acts, has been compiled on the same lines as the four preceding volumes.

As in the case of preceding volumes, the work of revision has devolved principally on Mr. John Morison, Barrister-at-Law, Personal Assistant to the Secretary to the Government of India in this Department.

H. W. C. CARNDUFF,

Deputy Secretary to the Government of India,
Legislative Department.

SIMLA;
The 15th November, 1898.

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CHRONOLOGICAL TABLE OF THE UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1885—1890.

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Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Page.
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Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Page.
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THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL.

ACT No. II OF 1885.[1]

[*30th January, 1885.*]

An Act to amend the Negotiable Instruments Act, 1881.

XXVI of 1881.

WHEREAS it is expedient to amend the Negotiable Instruments Act, 1881,[2] in manner hereinafter appearing ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Negotiable Instruments Act, 1885.

Amendment of section 7, Act XXVI of 1881.

XXVI of 1881.

2. In the fourth paragraph of section 7 of the Negotiable Instruments Act, 1881,[1] for the words "When acceptance is refused and the bill is protested for non-acceptance" the following shall be substituted, namely :— "When a bill of exchange has been noted or protested for non-acceptance or for better security".

New section inserted after section 45 of the same Act

3. After section 45 of the same Act the following shall be inserted :—

Holders' right to duplicate of lost bill.

"45A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

"If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so."

---

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 19 ; for Report of the Select Committee, *see ibid*, 1885, Pt. V, p. 39 ; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 393 and 399, and *ibid*, 1885, Supplement, p. 183.

This Act is now in force in the whole of Upper Burma (except the Shan States) as being part of the original Act XXVI of 1851, declared in force there by the Burma Laws Act, 1898 (XIII of 1898), *see* the First Schedule and s. 4.

Act II of 1885 had been previously declared in force in the Town of Mandalay only, in Upper Burma by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 (*1*), now repealed by Act XIII of 1898.

[2] Printed, General Acts, Vol. III, Ed. 1898, p. 399.

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Addition to sections 61 and 64 of the same Act.

4. To section 61, and the first paragraph of section 64, of the same Act, the following shall be added :—

"Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient."

Addition to section 101 of the same Act.

5. To section 101 of the same Act the following shall be added :—

"A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk or, where authorised by agreement or usage, by registered letter."

Section inserted after section 104 of the same Act. When noting equivalent to protest.

6. After section 104 of the same Act the following shall be inserted :—

"104A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting."

7. [*Section 108 of the same Act, in part, repealed.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of section 109 of same Act.

8. In the same Act, section 109,

(*a*) for the words "in the presence of a notary public subscribe the bill with his own hand and" the following shall be substituted, namely:—"by writing on the bill under his hand."

(*b*) [*Repeal of last twelve words of section 109.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of section 113 of same Act.

9. In the same Act, section 113, after the words "the person so paying" the words "or his agent in that behalf" shall be inserted.

New chapter added to same Act.

10. After Chapter XVI of the same Act the following shall be inserted :—

"CHAPTER XVII.

"NOTARIES PUBLIC.

Power to appoint notaries public.

"138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

Power to make rules for notaries public.

"139. The Governor General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries."

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ACT No. III OF 1885.[1]

[*30th January, 1885.*]

An Act to amend the Transfer of Property Act, 1882.[2]

IV of 1882.

WHEREAS it is expedient to amend the Transfer of Property Act, 1882;[2] It is hereby enacted as follows:—

Amendment of section 1 of Act IV of 1882.

1. For the fifth clause of section 1 of the said Act the following shall be substituted, namely:—

"And any Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely:—

"Sections 54, paragraphs 2 and 3, 59, 107 and 123."

Addition to same section.

2. The following clause shall be deemed to have been added to the first section of the said Act from the date on which it came into force, namely:—

"Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877,[3] under the power conferred by the first section of that Act or otherwise."

III of 1877.

Addition to section 4 of same Act.

3. To section 4 of the said Act the following shall be added, namely:—

"And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1877."[3]

Addition to section 6 of same Act.

4. To section 6 of the said Act the following clause shall be added:—

"(*j*) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee."

---

[1] Short title, "The Transfer of Property Act (1882) Amendment Act, 1885," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI, Ed. 1898.

For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 475; for Report of the Select Committee, *see ibid*, 1885, Pt. V, p. 37; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 1169 and 1273, and *ibid*, 1885, Supplement, p. 185.

This Act is in force—

(*1*) in the whole of the territories, other than the Scheduled Districts, under the administration of the Government of Bombay, *see* Bombay Government Gazette, 1892, Pt. I, p. 1071;

(*2*) the area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon, *see* Burma Gazette, 1892, Pt. I, p. 373.

as being part of the Transfer of Property Act, 1882 (IV of 1882).

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 40.

[3] Printed, General Acts, Vol. III, Ed. 1898, p. 41.

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Amendment of section 69 of same Act.

5. In section 69 of the said Act—

(*a*) after the words "is valid in the following cases" the words "and in no others" shall be inserted; and

(*b*) after the words "Hindu, Muhammadan or Buddhist", in both places where they occur, there shall be inserted the words "or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette."

ACT No. IX OF 1885.[1]

[*29th May, 1885.*]

An Act * * *[2] to amend * * * * *[3] the Bengal Excise Act, 1878, and the Sea Customs Act, 1878.[4]

WHEREAS it is expedient * * * *[2] to amend * * * * *[3] section 18 of the Bengal Excise Act, 1878, and sections 145, 149 and 207 of the Sea Customs Act, 1878,[4] in manner hereinafter appearing; It is hereby enacted as follows:— Ben. Act VII of 1878. VIII of 1878.

1. [*Repeal of part of section 6 of Act XI of 1882.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

2. [*Amendment of section 7 of Act XXII of 1881.*] *Rep. by the Excise Act, 1896 (XII of 1896).*

Amendment of section 18 of Ben. Act VII of 1878.

3. In section 18 of the Bengal Excise Act, 1878, for the words "at the rate leviable under any Tariff Act for the time being in force" the words "at such rate as the Local Government may from time to time fix in respect of such spirituous liquor" shall be substituted; but nothing in this section shall affect any Act passed after this Act comes into force by the Lieutenant-Governor of Bengal in Council. VII of 1878.

Saving of duties already fixed under section 6 of Act XI of 1882.

4. The duty now fixed by the Local Government under section 6 of the Indian Tariff Act, 1882,[5] as leviable on spirit manufactured in all or any of XI of 1882.

---

[1] Short title, "The Excise and Sea Customs Law Amendment Act, 1885," *see* the Indian Short Titles Act, 1897 (XIV of 1897).

For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 599; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 1651 and 1709, and *ibid*, 1885, Supplement, p. 897.

So far as the Act amends the Sea Customs Act, 1878 (VIII of 1878) it is in force in Upper Burma (except the Shan States) as being a part of that Act declared in force there by s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898).

Ss. 1, 3 and 4 of this Act have been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), s. 2, printed, Bengal Code, Vol. I, Ed. 1889, p. 597.

[2] The words "to repeal part of section 6 of the Indian Tariff Act, 1882 and" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI.

[3] The words "the Excise Act, 1881," in the title and the words "section 7 of the Excise Act, 1881," in the preamble were repealed by the Excise Act, 1896 (XII of 1896).

[4] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

[5] Repealed by the Tariff Act, 1894 (VIII of 1894), printed, General Acts, Vol. VI.

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the distilleries situate in the territories under its administration, or in any part of such territories, shall, in places in which * * * *[1] the Bengal Excise Act, 1878, is in force be deemed to be the duty fixed by the Local Government under section * * [2]18 of that [2] Act, as amended by this Act *[2].

Ben. Act VII of 1878.

VIII of 1878.

5. (*1*) In section 145 of the Sea Customs Act, 1878,[3] after the word "shall" the words "except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed warehouse" shall be inserted.

Amendment of sections 145 and 149 of Act VIII of 1878.

(*2*) In section 149 of the same Act, after the words "custom-house" the words "or to a warehouse licensed under any enactment for the time being in force" shall be inserted.

6. In section 207 of the same Act, for the word "respectively" the words "or any like body hereafter created for any other port" shall be substituted.

Amendment of section 207 of the same Act.

ACT No. XII OF 1885.[4]

[*22nd July, 1885.*]

An Act to amend the law relating to the carriage of passengers by sea.

18 & 19 Vict., c. 119.

WHEREAS by section 99 of an Act of the Imperial Parliament called "The Passengers Act, 1855,"[5] it is enacted that "it shall be lawful for the Governor General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act or any part thereof shall apply to the carriage of passengers upon any voyage, from any ports or places within the territories of British India, to be specified in such Act or Acts, to any other places whatsoever, to be also specified in such Act or Acts;" and it is thereby also enacted that "on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be

---

[1] The words "the Excise Act, 1881, or" were repealed by the Excise Act, 1896 (XII of 1896).

[2] The following changes in s. 4, namely, the alteration of "sections" for "section", the omission of the word "and" in the last line, the alteration of the word "this" to the word "that" and of the word "Acts" to the word "Act", and the omission of the word "respectively" at the end of the section, have been necessitated by the repeal of the figure "7" as relating to the Excise Act, 1881 (XXII of 1881), by the Excise Act, 1896 (XII of 1896), which repeals so much of this Act as relates to Act XXII of 1881.

[3] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

[4] For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 602; for Report of the Select Committee, *see ibid*, 1885, Pt. IV, p. 185; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 1652 and 1709, and *ibid*, 1885, Supplement, p. 1179.

[5] Printed, Collection of Statutes relating to India, Vol. I, Ed. 1881, p. 640.

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adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall be specified. The provisions of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced;"

And whereas certain parts of the said Act of Parliament were by Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) made applicable to the carriage of passengers upon certain specified voyages;

And whereas by an Act of the Imperial Parliament called "The Passengers Act Amendment Act, 1863," certain parts of the Passengers Act, 1855, which were so made applicable, have been amended, and it is provided that the said Acts of the Imperial Parliament shall be construed together as one Act; 26 & 27 Vict., c. 51. 18 & 19 Vict., c. 119.

And whereas it is expedient that the amendments so made in the Passengers Act, 1855, should also be made in the parts of that Act so made applicable, and it is also expedient to apply those parts so amended to the carriage of passengers upon certain voyages not specified in Act II of 1860;

It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Sea Passengers Act, 1885; and

(*2*) It shall come into force on the first day of October, 1885.

2. [*Repeal of Act II of 1860.*] *Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).

Certain provisions of the Statutes made applicable to specified voyages from India.

3. The provisions contained in sections 4, 5 and 6 of this Act, and the schedule hereto annexed (being parts of the Passengers Act, 1855, as amended by the Passengers Act Amendment Act, 1863), are declared applicable to the carriage of passengers upon the following voyages, namely:— 18 & 19 Vict., c. 119. 26 & 27 Vict., c. 51.

(*a*) voyages from the ports of Calcutta, Madras and Bombay to the British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis and Fiji;

(*b*) voyages from the ports of Calcutta, Madras and Bombay to the French Colonies of Réunion, Martinique, Guadeloupe and its dependencies, and Guiana;

(*c*) voyages from the ports of Calcutta, Madras and Bombay to the Netherlands colony of Dutch Guiana;

(*d*) voyages from the ports of Calcutta, Madras and Bombay to the Danish colony of St. Croix;

(*e*) voyages under the Native Passenger Ships Act, 1876, from Calcutta, Madras, Bombay, Karachi, Rangoon and other ports in British VIII of 1876.

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India to the Straits Settlements, to the protected Native States adjoining the Straits Settlements, to Australia, and to ports in the Red Sea, Gulf of Aden or Persian Gulf and on the East Coast of Africa.

Governors or Consuls may pay expenses of passengers taken off passenger-ship.

4. If the passengers or cabin-passengers upon any such voyage as is specified in the last preceding section are taken off from the ship carrying them or are picked up at sea from any boat, raft or otherwise, it shall be lawful, if the port or place to which they are conveyed is in any of Her Majesty's colonial possessions, for the Governor of such colony, or for any person authorized by him for the purpose, or, if in any foreign country, for Her Majesty's Consular Officer at such port or place therein, to defray all or any part of the expenses thereby incurred.

Governors or Consuls may send on passengers, if the master of the ship fail to do so.

5. If any passenger or cabin-passenger of any such passenger-ship as aforesaid, without any neglect or default of his own, finds himself within any colonial or foreign port or place other than that for which the ship was originally bound, or at which he, or the Emigration Agent, or any public officer or other person on his behalf, has contracted that he should land, it shall be lawful for the Governor of the colony, or for any person authorized by him for the purpose, or for Her Majesty's Consular Officer at the foreign port or place, as the case may be, to forward the passenger or cabin-passenger to his intended destination, unless the master of the ship, within forty-eight hours of the arrival of such passenger or cabin-passenger, gives to the Governor or Consular Officer, as the case may be, a written undertaking to forward or carry on within six weeks thereafter the passenger or cabin-passenger to his original destination, and unless the master accordingly forwards or carries him on within that period.

Expenses incurred under sections 4 and 5 to be a Crown debt.

6. (*1*) All expenses incurred under the last two preceding sections, or either of them, by or by the authority of a Governor or Consular Officer, or other person as therein respectively mentioned, including the cost of maintaining the passengers and cabin-passengers until forwarded to their destination, and of all necessary bedding, provisions and stores, shall become a debt to Her Majesty and Her successors from the owner, charterer and master of the ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts.

(*2*) A certificate in the form given in the schedule hereto annexed, or as near thereto as the circumstances of the case will admit, purporting to be under the hand of any such Governor or Consular Officer (as the case may be), stating the total amount of the expenses, shall, in any suit or other

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proceeding for the recovery of the debt, be received in evidence without proof of the handwriting or of the official character of the Governor or Consular Officer, and shall be deemed sufficient evidence of the amount of the expenses, and that the same were duly incurred;

nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant specially pleads and duly proves that the certificate is false or fraudulent, or specially pleads and duly proves any facts showing that the expenses were not duly incurred:

Provided, nevertheless, that in no case shall any larger sum be recovered on account of the expenses than a sum equal to twice the total amount of passage-money received or due to and recoverable by or on account of the owner, charterer or master of the passenger-ship or any of them from or on account of the whole number of passengers and cabin-passengers who may have embarked in the ship; which total amount of passage-money shall be proved by the defendant if he will have the advantage of this limitation of the debt; but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage-money, or to any compensation for loss of passage.

Insurance.

7. No policy of assurance effected in respect of any passages or of any passage or compensation money by any person by this Act made liable in the events aforesaid to provide those passages or to pay that money, or in respect of any other risk under this Act, shall be deemed invalid by reason of the nature of the risk or interest sought to be covered by the policy of assurance.

THE SCHEDULE.

Form of Governor's or Consul's Certificate of Expenditure in the case of Passengers shipwrecked, etc.

(See section 6.)

I hereby certify that acting under, and in conformity with, the provisions of the Indian Sea Passengers Act, 1885, I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions and stores (*a*), and in forwarding to their destination

passengers [including

(*a*) *N.B.*—1. If more passengers were rescued than forwarded, or if bedding, etc., was not supplied, alter the certificate to suit the facts of the case.

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(*b*) *N.B.*—2. Omit words in brackets when necessary.

(*c*) *N.B.*—3. State generally the nature of the disaster and where it occurred. But if the passengers were only left behind without any default of their own, state the fact accordingly.

cabin-passengers (*b*),] who were proceeding from to in the passenger-ship which was wrecked at sea, etc. (*c*).

And I further certify, for the purposes of the sixth section of the said Indian Sea Passengers Act, 1885, that the total amount of such expenses is , and that such expenses were duly incurred by me under the said Act.

Given under my hand this day of , 18 .

Governor of, etc., (or, as the case may be) *Her Britannic Majesty's Consul at* .

THE INDIAN TELEGRAPH ACT, 1895.

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ACT No. XIII OF 1885.[1]

[*22nd July, 1885.*]

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, local extent, and commencement.

1. (*1*) This Act may be called the Indian Telegraph Act, 1885.

(*2*) It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty; and

(*3*) It shall come into force on the first day of October, 1885.

Repeal and savings.

I of 1876. 2. The Indian Telegraph Act, 1876, is hereby repealed.

But all licenses granted and rules made under that Act or any Act thereby repealed, and now in force, shall, so far as they could be granted or made under this Act, be deemed to have been respectively granted and made hereunder.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "telegraph" means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for transmitting or making telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism:

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 481; for Report of the Select Committee, *see ibid*, 1885, Pt. IV, p. 192; and for Proceedings in Council, *see ibid*, 1884, Supplement, pp. 1169 and 1296, and *ibid*, 1885, Supplement, p. 1181.

This Act has been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 (*1*), *see* now s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898) by which Act XX of 1886 has been repealed; and in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), s. 2, printed, Bengal Code, Vol. I, Ed. 1889, p. 597; British Baluchistan, *see* s. 3 and Schedule to the British Baluchistan Laws Regulation, 1890 (I of 1890), Baluchistan Code, Ed. 1890.

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(2) "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the Government or by a person licensed under this Act:

(3) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered:

(4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same:

(5) "post" means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line:

(6) "telegraph authority" means the Director General of Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act:

(7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

Exclusive privilege in respect of telegraphs, and power to grant licenses.

4. Within British India, the Governor General in Council shall have the exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Governor General in Council may grant a license, on such conditions and in consideration of such payments as he thinks fit, to any person to establish, maintain or work a telegraph within any part of British India.

Power for Government to take possession of licensed telegraphs and to order interception of messages.

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the Governor General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor General in Council, may—

(a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act; or

(b) order that any message or class of messages to or from any person, or class of persons or relating to any particular subject, brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained or shall be

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disclosed to the Government or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

Power to establish telegraph on land of Railway Company.

6. Any Railway Company, on being required so to do by the Governor General in Council, shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

Power to make rules for the conduct of telegraphs.

7. (1) The Governor General in Council may, from time to time, by notification in the Gazette of India, make rules[1] consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say :—

(a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted ;

(b) the precautions to be taken for preventing the improper interception or disclosure of messages ;

(c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved ; and

(d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer.

(3) When making rules for the conduct of any telegraph established, maintained or worked by any person licensed under this Act, the Governor General in Council may by the rules prescribe fines for any breach of the same :

Provided that the fines so prescribed shall not exceed the following limits, namely :—

(i) when the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues ;

(ii) when a servant of the person so licensed, or any other person, is

[1] For rules framed under this section, *see* Gazette of India, 1897, Pt. I, p. 559, and *ibid*, 1898, Pt. I, p. 189.

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punishable for the breach, one-fourth of the amounts specified in clause (i).

Revocation of licenses.

8. The Governor General in Council may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder.

Government not responsible for loss or damage.

9. The Secretary of State for India in Council shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

PART III.

Power to place Telegraph Lines and Posts.

Power for telegraph authority to place and maintain telegraph lines and posts.

[1] 10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property:

Provided that—

(*a*) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Government, or to be so established or maintained;

(*b*) the Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and,

(*c*) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(*d*) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (*c*), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

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[1] For power of Governor General in Council to confer upon any public officer any of the powers of the telegraph authority with respect to the placing of lines and posts, *see* the Electricity Act, 1887 (XIII of 1887), s. 6, *infra*, p. 158.

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11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Power to enter on property in order to repair or remove telegraph lines or posts.

Provisions applicable to Property vested in or under the Control or Management of Local Authorities.

12. Any permission given by a local authority under section 10, clause (*c*), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

Power for local authority to give permission under section 10, clause (*c*), subject to conditions.

13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

Power for local authority to require removal or alteration of telegraph line or post.

14. The telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Power to alter position of gas or water pipes or drains.

Provided that—

(*a*) when the telegraph authority desires to alter the position of any such pipe or drain it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is;

(*b*) a local authority or person receiving notice under clause (*a*) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

15. (*1*) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred

Disputes between telegraph author-

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ity and local authority.

to in section 10, clause (*c*), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Local Government may appoint either generally or specially in this behalf.

(*2*) An appeal from the determination of the officer so appointed shall lie to the Local Government; and the order of the Local Government shall be final.

Provisions applicable to other Property.

Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.

16. (*1*) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (*d*) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(*2*) If, after the making of an order under sub-section (*1*), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.[1] XLV of 1860.

(*3*) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (*d*), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(*4*) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (*3*), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(*5*) Every determination of a dispute by a District Judge under sub-section (*3*) or sub-section (*4*) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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17. (*1*) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Removal or alteration of telegraph line or post on property other than that of a local authority.

Provided that, if compensation has been paid under section 10, clause (*d*), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(*2*) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(*3*) A District Magistrate receiving an application under sub-section (*2*) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.

Provisions applicable to all Property.

18. (*1*) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

Removal of trees interrupting telegraphic communication.

(*2*) When disposing of an application under sub-section (*1*), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the Government, shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

Telegraph lines and posts placed before the passing of this Act.

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PART IV.

PENALTIES.

Establishing, maintaining or working unlicensed telegraph or breaking condition of license.

20. If any person establishes, maintains or works a telegraph within British India, otherwise than as permitted by a license granted under section 4, or breaks any condition contained in such a license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the line is maintained or worked or the breach of the condition continues.

Using such telegraphs.

21. If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

Opposing establishment of telegraphs on railway land.

22. If a Railway Company, or an officer of a Railway Company, neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

Intrusion into signal-room, trespass in telegraph office or obstruction.

23. If any person—

(*a*) without permission of competent authority, enters the signal-room of a telegraph office of the Government, or of a person licensed under this Act, or

(*b*) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or

(*c*) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(*d*) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

Unlawfully attempting to learn contents of messag s.

24. If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

Intentionally damaging or tampering

25. If any person, intending—

(*a*) to prevent or obstruct the transmission or delivery of any message, or

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(*b*) to intercept or to acquaint himself with the contents of any message, or

(*c*) to commit mischief,

with telegraphs.

damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

26. If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

Telegraph officer or other official making away with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals.

(*a*) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or

(*b*) wilfully and otherwise than in obedience to an order of the Governor General in Council or of a Local Government, or of an office specially authorized by the Governor General in Council to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or

(*c*) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

27. If any telegraph officer transmits by telegraph any message on which the charge prescribed by the Government, or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the Government or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telegraph officer fraudulently sending messages without payment.

28. If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Misconduct.

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Sending fabricated message.

29. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Retaining a message delivered by mistake.

30. If any person fradulently retains, or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Bribery.

31. A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code; [1] and, in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act. XLV of 1860.

Attempts to commit offences.

32. Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

PART V.

Supplemental Provision.

Power to employ additional police in places where mischief to telegraphs is repeatedly committed.

33. (*1*) Whenever it appears to the Local Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the Local Government may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

(*2*) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the Local Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(*3*) All moneys payable under sub-section (*2*) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(*4*) The Local Government may, by order in writing, define the limits of any place for the purposes of this section.

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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[1] **34.** (*1*) This Act, in its application to the Presidency-towns, shall be read as if the words "District Magistrate" in section 16, sub-section (*1*), and section 17, sub-sections (*2*) and (*3*), for the words "Magistrate of the first or second class" in section 18, sub-section (*1*), and for the word "Magistrate" in section 18, sub-section (*2*), there had been enacted the words "Commissioner of Police," and for the words "District Judge," in section 16, sub-sections (*3*), (*4*) and (*5*), the words "Chief Judge of the Court of Small Causes." Application of Act to Presidency-towns and Rangoon.

(*2*) Section 16, in its application to the town of Rangoon, shall be read as if for the words "District Judge," whenever they occur in that section, there had been enacted the words "Judge of the Court of Small Causes."

(*3*) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (*3*) of section 16 shall be the same as would be payable under the Court-fees Act, 1870,[2] in respect of such an application to a District Judge beyond the limits of a Presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (*3*) or sub-section (*4*) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882.[3] VII of 1870. XV of 1882.

ACT No. XV OF 1885.[4]

[*2nd October, 1885.*]

An Act to amend the Local Authorities Loan Act, 1879.

XI of 1879.

WHEREAS it is expedient to amend the Local Authorities Loan Act, 1879;[5] It is hereby enacted as follows:—

1. After clause (*b*) of the proviso to section 8 of the said Act the following shall be added:— Addition to section 8, Act XI of 1879.

"or

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[1] S. 34 was added by the Indian Telegraphs (Presidency-towns) Act, 1888 (XI of 1888), printed, *infra*, p. 257.

[2] Printed, General Acts, Vol. II, Ed. 1898, p. 124.

[3] Printed, General Acts, Vol. IV, Ed. 1898.

[4] Short title, "The Local Authorities Loan Act (1879) Amendment Act, 1885, *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 181; for Report of the Select Committee, *see ibid*, Pt. IV, p. 225; and for Proceedings in Council, *see ibid*, 1885, pp. 845, 859 and 1473.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), s. 2, printed, Bengal Code, Vol. I, Ed. 1889, p. 597. The Act is in force in Upper Burma (except the Shan States) as being part of the original Act XI of 1879, declared in force there by s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898). Under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, it had been previously extended there, *see* Burma Gazette, 1888, Pt. I, p. 544, and Gazette of India, 1889, Pt. I, p. 51.

[5] Printed, General Acts, Vol. III, Ed. 1898, p. 259.

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"(c) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied."

THE LAND ACQUISITION (MINES) ACT, 1885.

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15. Pending cases.
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ACT No. XVIII OF 1885.[1]

[*16th October, 1885.*]

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.[2]

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870; It is hereby enacted as follows :—

X of 1870.

Short title, commencement and local extent.

1. (*1*) This Act may be called the Land Acquisition (Mines) Act, 1885; and

(*2*) It shall come into force at once.

(*3*) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

Saving for mineral rights of the Government.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

Declaration that mines are not needed.

3. (*1*) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870,[3] that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

X of 1870.

(*2*) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870,[3] and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under

X of 1870.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 145; for Report of the Select Committee, *see ibid*, Pt. IV, p. 264; and for Proceedings in Council, *see ibid*, Supplement, pp. 336 and 1520, and *ibid*, Extra Supplement, dated 14th March, 1885, p. 41.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), s. 2, printed, Bengal Code, Vol. I, Ed. 1889, p. 597; in Angul and the Khondmals, *see* the schedule to the Angul District Regulation, 1894 (I of 1894).

[2] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI

[3] *See* now s. 6 of the Land Acquisition Act, 1894 (I of 1894).

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section 11[1] of the said Land Acquisition Act in respect of the mines, and may—

(*a*) when he makes an award under section 14[1] of that Act, insert such a statement in his award;

(*b*) when he makes a reference to the Court under section 15[2] of that Act, insert such a statement in his reference; or

(*c*) when he takes possession of the land under section 17[3] of that Act, publish such a statement in such manner as the Governor General in Council may, from time to time, prescribe.

(*3*) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

Notice to be given before working mines lying under land.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

Power to prevent or restrict working.

5. (*1*) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(*2*) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may publish in such manner as the Governor General in Council may, from time to time, direct, a declaration of its willingness, either—

(*a*) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(*b*) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(*3*) If the declaration mentioned in case (*a*) is made, then those mines or

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[1] *See* now s. 11 of the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI.
[2] *See* now s. 19 of the Land Acquisition Act, 1894 (I of 1894).
[3] *See* now s. 17 of the Land Acquisition Act, 1894 (I of 1894).

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minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(*4*) If the declaration mentioned in case (*b*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

Mode of determining persons interested and amount of compensation.

6 When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870,[1] for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

X of 1870.

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

7. (*1*) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(*2*) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(*3*) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

Mining communications.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Governor General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the

[1] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI.

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same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Local Government to pay compensation for injury done to mines;

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.[1] X of 1870.

and also for injury arising from any airway or other work.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to officer of Local Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appo nted for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked.

Penalty for refusal to allow inspection.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local Government for that purpose to enter

[1] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI.

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into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions[1] of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

Construction of Act when land acquired has been transferred to a local authority or Company.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested, by operation of law, in, a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words "the Local authority or Company, as the case may be, which has acquired the land" were substituted.

Pending cases.

I of 1870.

15. (*1*) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act, 1870,[2] are pending at the time when this Act comes into force, unless before that time the Collector has made, in respect of the land, an award under section 14[3] or a reference to the Court under section 15[3] of that Act, or has taken possession of the land under section 17[3] of the same.

(*2*) When the Collector has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870,[2] to act for persons so interested, who have attended or may attend in the course of the proceedings under sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870,[2] consent in writing to the application of this Act to the land, the Collector may by an order in writing direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act.

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[1] *See* s. 7, sub-section (*1*), *supra*.
[2] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI.
[3] *See* now ss. 11, 19 and 17, respectively, of the Land Acquisition Act, 1894 (I of 1894).

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Definition of local authority and Company.

16. In this Act—

(*a*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(*b*) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

This Act to be read with Land Acquisition Act, 1870.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.[1] X of 1870.

THE INCOME-TAX ACT, 1886.

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[1] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI.

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ACT No. II OF 1886.[1]

[*29th January, 1886.*]

An Act for imposing a tax on income derived from sources other than agriculture.

WHEREAS it is expedient to impose a tax on income derived from sources other than agriculture; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Extent and commencement.

1. (*1*) This Act extends to the whole of British India, and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf; and

(*2*) It shall come into force on the 1st day of April, 1886.

(*3*) [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*[2]]

Repeal.

2. On and from the day on which this Act comes into force the enactments specified in the first schedule to this Act shall be repealed, except as to fees payable and other sums due under those enactments and the mode of recovering the same.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund:

(*2*) "company" means an association carrying on business in British India, whose stock or funds is or are divided into shares and transferable,

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[1] Short title, "The Indian Income-tax Act, 1886," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 33; for Report of the Select Committee, *see ibid*, Pt. IV, p. 41; and for Proceedings in Council, *see ibid*, Supplement, pp. 45, 179 and 214. For consolidated rules made under the powers conferred by the Act, *see* Gazette of India, 1890, Pt. I, p. 409—Notification No. 2763.

Act II of 1886 has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886) printed, Bengal Code, Vol. I, Ed. 1889, p. 597; in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), *see* the First Schedule and s. 4.

The Act had already been extended there under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Gazette of India, 1896, Pt. I, p. 974.

[2] Printed, General Acts, Vol. VI.

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whether the company is incorporated or not, and whether its principal place of business is situate in British India or not:

(3) "prescribed" means prescribed by the Governor General in Council by notification in the Gazette of India, or by the Governor General in Council or a Local Government by rules made under this Act:

(4) "salary" includes allowances, fees, commissions, perquisites or profits received, in lieu of or in addition to a fixed salary, in respect of an office or employment of profit; but, subject to any rules which may be prescribed in this behalf, it does not include travelling, tentage, horse or sumptuary allowance, or any other allowance granted to meet specific expenditure:

(5) "income" means income and profits accruing and arising or received in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf:

(6) "Magistrate" means a Presidency Magistrate or a Magistrate of the first or second class:

(7) "person" includes a firm and a Hindu undivided family:

(8) "defaulter" includes a company or firm making default under this Act:

(9) "Collector" means the chief officer in charge of the revenue-administration of a district, and, in a Presidency-town, any officer whom the Local Government, by notification in the official Gazette, may, by name or by virtue of his office, appoint to be a Collector for the purposes of this Act; in the case of a company or firm, it means the Collector, as here defined, of the district or presidency-town in which its principal place of business in British India is situate; and, in the case of any other person chargeable under this Act, it means the Collector, defined as aforesaid, of the district or presidency-town in which the person has his residence:

(10) "principal officer," used with reference to a local authority or a company or any other public body or association not being a local authority or company, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association; or

(b) any person connected with the authority, company, body or association upon whom the Collector has caused a notice to be served of his intention of treating him as the principal officer thereof; and

(11) "Part" means a Part of the second schedule to this Act.

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CHAPTER II.

Liability to Tax.

4. Subject to the exceptions mentioned in the next following section, there shall be paid, in the year beginning with the first day of April, 1886, and in each subsequent year, to the credit of the Government of India, or as the Governor General in Council directs, in respect of the sources of income specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule. Incomes liable to the tax.

5. (*1*) Nothing in section 4 shall render liable to the tax— Exceptions.

(*a*) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land-revenue or subject to a local rate assessed and collected by officials of the Government, as such; or

(*b*) any income derived from—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce; or

(*c*) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (*a*), or by the cultivator, or the receiver of rent-in-kind, of any land with respect to which or the produce whereof any operation mentioned in clause (*b*) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue, or the cultivator or the receiver of the rent-in-kind, by reason of his connection with the land, requires as a dwelling-house, or as a store-house, factory or other out-building; or

(*d*) any profits of a shipping company incorporated or registered out of British India and having its principal place of business out of India and its ships ordinarily engaged in seagoing traffic out of Indian waters; or

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(*e*) any income derived from property solely employed for religious or public charitable purposes; or

(*f*) any income which a person enjoys as a member of a company or of a firm or of a Hindu undivided family when the company or the firm or the family is liable to the tax; or,

(*g*) subject to any conditions and restrictions which may be prescribed in this behalf, such portion, not exceeding one-sixth, of the income in respect whereof a person would, but for this exception, be chargeable under this Act, as is deducted from the salary of the person under the authority or with the permission of the Government for the purpose of securing a deferred annuity to him or a provision to his wife or children after his death or is paid by the person to an insurance company in respect of an insurance or deferred annuity on his own life or on the life of his wife; or

(*h*) any interest on stock-notes; or

(*i*) the salary of any officer, warrant-officer, non-commissioned officer or private of Her Majesty's Forces or of Her Majesty's Indian Forces who is not in an employment which, according to the ordinary practice, is held indifferently by military persons and civilians, and whose salary does not exceed five hundred rupees per mensem; or

(*j*) any person whose income from all sources is less than five hundred rupees per annum.

(2) An officer or servant is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under this section.

Power to make exemptions.

6. The Governor General in Council may, by notification in the Gazette of India, exempt from liability to the tax [1] the whole or any part of the income of any class or tribe, or of any persons residing in any specified area, and may, by like notification, revoke the exemption.

CHAPTER III.

Assessment and Collection.

A.—Salaries and Pensions.

Mode of pay.

7. In the case of a person receiving any salary, annuity, pension or

[1] For the consolidated notification as to exemptions from tax and assessment under the Act, issued under this s. 6 and s. 38, *see* Gazette of India, 1890, Pt. I, p. 408, and *ibid*, 1893, Pt. I, p. 647.

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gratuity from the Government, any sum payable to him by the Government in respect of the salary, annuity, pension or gratuity shall be reduced by the amount of the tax to which he is liable under Part I in respect thereof.

ment in case of Government officials and pensioners.

8. (*1*) In the case of a person receiving any salary, annuity, pension or gratuity from a local authority, the tax to which he is liable under Part I shall, at the time of the payment to him of any of the salary, annuity, pension or gratuity, be deducted therefrom by the officer whose duty it is to make the payment, and be paid by that officer within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

Mode of payment in case of servants and pensioners of local authorities.

(*2*) If that officer does not deduct and pay the tax as required by sub-section (*1*), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(*3*) If, when any payment is made, the tax is from any cause not deducted, it may, and on the requisition of the Collector shall, be deducted when any salary, annuity, pension or gratuity is subsequently paid to the person liable to the tax.

(*4*) The power to deduct under this section shall be without prejudice to any other mode of recovery.

9. (*1*) The tax to which a person receiving any salary, annuity, pension or gratuity from a company, or from any other public body or association not being a local authority or company, or from a private employer, is liable under Part I, shall be payable by him at the time when any portion of the salary, annuity, pension or gratuity is paid to him.

Mode of payment in case of servants and pensioners of companies and private employers.

(*2*) The Collector may, subject to such conditions as may be prescribed, enter into an arrangement with any company, or any such body or association as aforesaid, or any private employer, with respect to the recovery on behalf of the Government by the company, body, association or employer of the tax to which any person receiving any salary, annuity, pension or gratuity from the company, body, association or employer is liable under Part I.

10. The principal officer of every local authority, and of every company, and of every other public body or association not being a local authority or company, shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, in the prescribed form, a return in writing showing—

Annual return by principal officer of company or association.

(*a*) the name of every person who is receiving at the date of the return any salary, annuity or pension, or has received during the year ending on that date any gratuity, from the authority, company,

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body or association, as the case may be, and the address of every such person so far as it is known; and

(*b*) the amount of the salary, annuity, pension or gratuity so received by each such person, and the time at which the same becomes payable or, in the case of a gratuity, was paid.

B.—Profits of Companies.

Annual statement of nett profits.

11. The principal officer in British India of every company shall prepare, and on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, a statement in writing signed by him of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of the nett profits so made during the year ending on the said thirty-first day of March.

Power to require officers of companies to produce accounts.

12. (*1*) If the Collector has reason to believe that a statement delivered under section 11 is incorrect or incomplete, he may cause to be served on the principal officer of the company a notice requiring him, on or before a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced, for the inspection of the Collector, such of the accounts of the company as refer to the year to which the statement relates and as are in his possession or power.

(*2*) On the day specified in the notice, or as soon afterwards as may be, the Collector shall, by an order in writing, determine the amount at which the company shall be assessed under Part II, and the time when the amount shall be paid, and, subject to the provisions of this Act, that amount shall be payable accordingly.

C.—Interest on Securities.

Mode of payment of tax on interest on securities.

13. (*1*) The tax payable under Part III in respect of the interest on any of the securities mentioned in that Part shall, at the time when and place where any of the interest is paid, be deducted therefrom by the person empowered to pay the interest, and be paid by that person within the prescribed time to the credit of the Government of India or as the Governor General in Council directs.

(*2*) If that person does not deduct and pay the tax as required by sub-section (*1*), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

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D.—Other Sources of Income.

Ordinary Mode of Assessment and Collection.

14. The Collector shall, from time to time determine what persons are chargeable under Part IV, and the amount at which every person so chargeable shall be assessed.

Collector to determine persons chargeable.

15. (*1*) The assessment shall be made upon the income accruing to the person during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then upon the income accruing to him during the year ending on the said thirty-first day of March.

Mode of making assessment.

(*2*) In the case of a person for the first time becoming chargeable under Part IV within the year for which the assessment is to be made, or within the year next before that year, the assessment shall be made according to an average of his income for such period as the Collector, having regard to the circumstances, directs.

16. (*1*) The Collector shall in each year prepare a list of the persons chargeable under Part IV whose annual income does not, in his opinion, amount to two thousand rupees.

List of incomes under two thousand rupees.

(*2*) The list shall be in the prescribed language or languages, and shall state in respect of every such person the following particulars, namely :—

(*a*) his name, and the source or sources of the income in respect of which he is chargeable ;

(*b*) the year or portion of the year for which the tax is to be paid ;

(*c*) the place or places, district or districts, where the income accrues ;

(*d*) the amount to be paid ; and

(*e*) the place where, and the person to whom, the amount is to be paid.

(*3*) The list shall be filed in the office of the Collector, with a notification prefixed thereto requiring every person mentioned in the list to pay, within sixty days from a date specified in the notification, the amount stated in the list as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

(*4*) The list so filed shall be open to inspection at all reasonable times without any payment.

(*5*) The list, or such part or parts thereof as the Collector thinks fit, with the notification prefixed thereto, shall be further published in such manner as

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the Local Government may consider to be best adapted for giving information to all persons concerned.

(*6*) The list to be prepared in each year may be the list of the previous year with such amendments as the Collector finds to be necessary.

Notices to persons with incomes of two thousand rupees and upwards.

17. In the case of a person chargeable under Part IV whose annual income is, in the Collector's opinion, two thousand rupees or upwards, the Collector shall cause a notice to be served on him stating the particulars (*a*) to (*e*), both inclusive, mentioned in section 16, sub-section (*2*), and requiring him to pay, within sixty days from a date specified in the notice, the amount stated therein as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

Power to modify ordinary procedure in special cases.

18. (*1*) Notwithstanding anything contained in section 16 or section 17, the Local Government may make rules—

(*a*) authorising or directing a Collector in specified cases, or classes of cases, to include in a list under section 16 any person who is liable to be served with a notice under section 17 instead of or in addition to serving him with such a notice, and to serve a notice under section 17 on any person liable to be included in a list under section 16 instead of or in addition to including him in such a list;

(*b*) authorising the Collector in any specified town or place to cause a general notice to be published, inviting every person chargeable under Part IV to deliver or cause to be delivered to the Collector, within a time specified in the notice, a return, in a prescribed form, published with the notice, of his income during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of his income during the year ending on the said thirty-first day of March;

(*c*) authorising the Collector in any presidency-town to cause a special notice to be served on any person chargeable under Part IV, inviting him to deliver or cause to be delivered to the Collector, within a time specified in the notice, a return, in a prescribed form, accompanying the notice, of his income computed in the manner described in clause (*b*) of this sub-section.

(*2*) A return delivered under rules made under clause (*b*) or clause (*c*) of sub-section (*1*) must state the period during which the income has actually accrued; and there must be added at the foot thereof a declaration that the

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income shown in the return is truly estimated on all the sources therein mentioned, that it has actually accrued within the period therein stated, and that the person making the return has no other sources of income.

(3) When a Collector authorised in that behalf by rules made under clause (*b*) or clause (*c*) of sub-section (*1*) has caused a notice to be published or served under those rules, he shall not include any person to whom the notice applies in any list made under section 16 or serve a notice on him under section 17 until the time specified in the notice published or served under those rules has expired.

(4) Rules made under this section shall be published in the official Gazette.

Time and place of payment.

19. Every amount specified as payable in a list or notice prepared or served under section 16 or section 17 shall be paid within the time, at the place, and to the person, mentioned in the list or notice.

Trustees, Agents, Managers and Incapacitated Persons.

Trustees, guardians and committees of incapacitated persons to be charged.

20. A person being the trustee, guardian, curator or committee of any infant, married woman subject to the law of England, lunatic or idiot, and having the control of the property of the infant, married woman, lunatic or idiot, whether the infant, married woman, lunatic or idiot resides in British India or not, shall, if the infant, married woman, lunatic or idiot is chargeable under Part IV, be chargeable under that Part in like manner and to the same amount as the infant would be chargeable if he were of full age, or the married woman if she were sole, or the lunatic or idiot if he were capable of acting for himself.

Non-residents to be charged in names of their agents.

21. Any person not resident in British India, whether a subject of Her Majesty or not, being in receipt, through an agent, of any income chargeable under Part IV, shall be chargeable under that Part in the name of the agent in the like manner and to the like amount as he would be chargeable if he were resident in British India and in direct receipt of that income.

Receivers, managers Courts of Wards, Administrators General and Official Trustees.

22. Receivers or managers appointed by any Court in India, the Courts of Wards, the Administrators General of Bengal, Madras and Bombay, and the Official Trustees shall be chargeable under Part IV in respect of all income officially in their possession or under their control which is liable to assessment under that Part.

Power to retain duties charged on trustees, etc.

23. When a trustee, guardian, curator, committee or agent is, as such, assessed under Part IV,

or when a receiver or manager appointed as aforesaid, a Court of Wards, an

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Administrator General or an Official Trustee is assessed under that Part in respect of income officially received,

the person or Court so assessed may, from time to time, out of the money coming to his or its possession as trustee, guardian, curator, committee or agent, or as receiver, manager, Court of Wards, Administrator General or Official Trustee, retain so much as is sufficient to pay the amount of the assessment.

Occupying Owners.

Provision for tax on occupying owners.

24. (*1*) Where a building is occupied by its owner, it shall be deemed a source of income within the meaning of this Act, and, if liable to be assessed under this Act, shall be assessed at five-sixths of the gross annual rent at which it may reasonably be expected to let, and, in the case of a dwelling-house, may be expected to let unfurnished.

(*2*) "Owner," as used in this section with reference to a building, means the person who would be entitled to receive the rent of the building if the building were let to a tenant.

CHAPTER IV.

Revision of Assessment.

Petition to Collector against assessment under Part IV.

25. (*1*) Any person objecting to the amount at which he is assessed, or denying his liability to be assessed, under Part IV may apply by petition to the Collector to have the assessment reduced or cancelled.

(*2*) The petition shall ordinarily be presented within the period specified in the notification prefixed to the list filed under section 16, or in the notice served under section 17, as the case may be. But the Collector may receive a petition after the expiration of that period if he is satisfied that the objector had sufficient cause for not presenting it within that period.

(*3*) The petition shall, as nearly as circumstances admit, be in the form contained in the third schedule to this Act, and the statements contained in the petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints.

Hearing of petition.

26. The Collector shall fix a day and place for the hearing of the petition, and on the day and at the place so fixed, or on the day and at the place, if any, to which he has adjourned the hearing, shall hear the petition and pass such order thereon as he thinks fit.

Petition to

27. Subject to the control of the Local Government, the Commissioner

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of the Division, on the petition of any person deeming himself aggrieved by an order under section 12, sub-section (*2*), or section 26 shall, if the amount of the assessment to which the petition relates is two hundred and fifty rupees or upwards, and may in his discretion if the amount of the assessment is less than two hundred and fifty rupees, call for the record of the case, and pass such order thereon as he thinks fit. Commissioner for revision.

28. The Collector or Commissioner may, for the purpose of enabling him to determine how the petitioner or the company which he represents should be assessed, summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure :[1] Power to summon witnesses, etc. XIV of 1882.

Provided that the Collector or Commissioner shall not call for any evidence except at the instance of the petitioner or in order to ascertain the correctness of facts alleged by him.

CHAPTER V.

Recovery of Arrears of Tax.

29. The tax chargeable under this Act shall be payable at the time appointed in that behalf in or under this Act, or, if a time is not so appointed, then on the first day of June in each year. Tax when payable.

30. (*1*) In any case of default under this Act the Collector, in his discretion, may recover a sum not exceeding double the amount of the tax either as if it were an arrear of land-revenue or by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the territories administered by the Local Government to which he is subordinate, or may pass an order that a sum not exceeding double that amount shall be recovered from the defaulter: Mode and time of recovery.

Provided that, where a person has presented a petition under section 25, such sum shall not be recoverable from him unless, within thirty days from the passing of the order on the petition, he fails to pay the amount, if any, required by that order.

(*2*) The Local Government may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (*1*) for the recovery of the tax chargeable under this Act.

(*3*) An order passed by the Collector under sub-section (*1*) shall have the force of a decree of a Civil Court in a suit in which the Government is the plaintiff and the defaulter is the defendant; and the order may be enforced in manner provided by the Code of Civil Procedure[1] for the enforcement of decrees for money; and the procedure under the said Code in respect of the following matters, namely :— XIV of 1882.

(*a*) sales in execution of decrees,

(*b*) arrest in execution of decrees for money,

(*c*) execution of decrees by imprisonment,

(*d*) claims to attached property, and

(*e*) execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued for levying the sum mentioned in the order; save that all the powers and duties conferred and imposed by the said Code upon the Court shall be exercised and discharged by the Collector by whom the order has been made or to whom a copy thereof has been sent for execution according to the provisions of the said Code,[1] sections 223 and 224. XIV of 1882.

(*4*) The Local Government may direct, with respect to any specified area, that the tax chargeable under this Act shall be recovered therein with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(*5*) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of three months from the last day of the year in respect of which the sum is payable.

CHAPTER VI.

Supplemental Provisions.

Composition.

Agreements for composition.

31. (*1*) If a company or person desires to compound for the tax assessable under Part II or Part IV, as the case may be, the Collector may, subject to such rules as may be prescribed in this behalf, agree with the company or

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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person for a composition for the tax on such terms and for such period as he thinks fit.

(2) The agreement shall provide for the payment, in each year of the period comprised in the agreement, of the amount of the composition; and that amount shall be recoverable in the same manner and by the same means as any other assessment made under Part II or Part IV, as the case may be.

Receipts.

Receipts and their contents.

32. When any money is paid under this Act to the Collector or is recovered thereunder by him, he shall give a receipt for the same, specifying—

(a) the date of the payment of recovery of the money;

(b) the amount paid or recovered;

(c) the person who was liable to the tax, and the source or sources of income in respect of which the tax was payable;

(d) the year or part of the year for which the tax was payable;

(e) the place or places, district or districts, where the income accrues; and

(f) such other particulars, if any, as may be prescribed.

Amendment of Assessment.

Amendment of assessment.

33. If a company or person assessed under Part II or Part IV ceases to carry on the trade or business in respect whereof the assessment was made, or if any such person dies or becomes insolvent before the end of the year for which the assessment was made, or if any such company or person is, from any other specific cause, deprived of or loses the income on which the assessment was made, then the company or person or its or his representative in interest may apply to the Collector during or within three months after the end of the year, and the Collector, on proof to his satisfaction of any such cause as aforesaid, shall amend the assessment as the case may require, and refund such sum, if any, as has been overpaid.

Penalties.

Failure to make payments or deliver returns or statements.

34. (1) If a person fails—

(a) to deduct and pay any tax as required by section 8, sub-section (1), or section 13, sub-section (1), or

(b) to deliver or cause to be delivered to the Collector in due time the return or statement mentioned in section 10 or section 11, or

(c) to produce, or cause to be produced, on or before the date mentioned in a notice under section 12, such accounts as are referred to in the notice,

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he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(*2*) The Commissioner of the Division may remit wholly or in part any fine imposed under this section.

False statement in declaration.

35. If a person makes a statement in a declaration mentioned in section 18, sub-section (*2*), which is false, and which he either knows or believes to be false or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.[1] XLV of 1860.

Prosecution to be at instance of Collector. Sections 193 and 228 of Penal Code to apply to proceedings.

36. A person shall not be proceeded against for an offence under section 34 or section 35, except at the instance of the Collector.

37. Any proceeding under section 12 or Chapter IV of this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.[1]

Power to make Rules.

Power to make rules.

[2] **38.** (*1*) The Governor General in Council may make rules consistent with this Act for ascertaining and determining income liable to assessment, for preventing the disclosure of particulars contained in documents delivered or produced with respect to assessments under Part IV, and, generally, for carrying out the purposes of this Act, and may delegate to a Local Government the power to make such rules so far as regards the territories subject to that Government.

(*2*) In making a rule for preventing the disclosure of any particulars referred to in sub-section (*1*), the Governor General in Council may direct that a public servant committing a breach of the rule shall be deemed to have committed an offence under section 166 of the Indian Penal Code.[1] XLV of 1860.

(*3*) But a person committing any such offence shall not be liable to be prosecuted therefor without the previous sanction of the Local Government.

(*4*) Rules made under this section shall be published in the official Gazette.

Miscellaneous.

Bar of suits in Civil Court.

39. No suit shall lie in any Civil Court to set aside or modify any assessment made under this Act.

Exercise of powers of Collector and

40. All or any of the powers and duties conferred and imposed by this Act on a Collector or on a Commissioner of Division may be exercised

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[2] As to exemption from liability to assessment, *see* notification referred to in footnote to s. 6, *supra*.

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and performed by such other officer or person as the Local Government appoints in this behalf.[1]

Commissioner.

41. An officer or person exercising all or any of the powers of a Collector under this Act may, by notice, require any person to furnish a list, in the prescribed form, containing, to the best of his belief,—

Obligation to furnish information respecting lodgers and employés.

(*a*) the name of every inmate or lodger resident in any house used by him as a dwelling-house or let by him in lodgings;

(*b*) the name of every other person receiving salary or emoluments amounting to forty-one rupees ten annas and eight pies per mensem, or five hundred rupees per annum, or upwards, employed in his service, whether resident in any such house as aforesaid or not; and

(*c*) the place of residence of such of those persons as are not resident in any such house, and of any inmate or lodger in any such house who has a place of residence elsewhere at which he is liable under this Act to be assessed and who desires to be assessed at that place.

42. An officer or person exercising all or any of the powers aforesaid may, by notice, require any person whom he has reason to believe to be a trustee, guardian, curator, committee or agent to deliver or cause to be delivered a statement of the names of the persons for or of whom he is trustee, guardian, curator, committee or agent.

Trustees and agents to furnish information as to beneficiaries and principals.

43. An officer or person exercising all or any of the said powers may, by notice, require a trustee, guardian, curator, committee or agent, or a receiver or manager appointed by any Court in India, or a Court of Wards, Administrator General or Official Trustee, to furnish such returns of income liable to assessment under Part IV as may be prescribed.

Trustees, etc., to furnish information as to income.

44. An officer or person exercising all or any of the said powers may, at the instance of any person respecting whose assessment or the amount thereof any doubt exists, require any person to furnish such information as he deems to be necessary for the purpose of ascertaining facts relevant to the assessment or its amount.

Obligation to furnish other information.

45. A person required to furnish any information under section 41, section 42, section 43 or section 44 shall be legally bound to furnish the same in such manner and within such time as may be specified in the requisition for the information.

Sections 176 and 177 of Penal Code to apply to requisitions for information.

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[1] For notifications investing certain Political officers with powers under this section in respect of persons residing out of British India, *see* Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1895, p. 18.

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Service of notices.

46. (*1*) A notice under this Act may be served on the person therein named either by a prepaid letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866,[1] or by the delivery or tender to him of a copy of the notice. XIV of 1866.

(*2*) If a notice is served by registered letter, it shall be presumed to have been served at the time when the letter would be delivered in the ordinary course of post, and proof that the letter was properly addressed and put into the post shall be sufficient to raise the presumption that the notice was duly served at that time.

(*3*) If the notice is to be served otherwise than by registered letter, the service shall, whenever it may be practicable, be on the person named in the notice, or, in the case of a firm, on some member thereof, or, in the case of a Hindu undivided family, on the manager of the joint estate of the family:

(*4*) But when the person, member or manager cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the serving officer shall fix the copy of the notice on the outer door of the house in which the person, firm or family therein named ordinarily resides or carries on business.

Power to declare principal place of business or residence.

47. (*1*) When a company or firm has several places of business in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be the principal place of business.

(*2*) When a company or firm has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

(*3*) When a person has several places of residence in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(*4*) When a person has several places of residence in the territories subject to a single Local Government, that Government may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(*5*) The powers given by this section may be delegated to, and exercised

[1] *See* now the Indian Post Office Act, 1898 (VI of 1898).

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by, such officers as the Governor General in Council or the Local Government, as the case may be, appoints in this behalf.

Saving in favour of payers of pándharí and capitation taxes.

48. Where a person is in respect of any period liable to the tax under this Act, he shall not in respect of that period be assessed to the pándharí-tax levied in the Central Provinces under Act XIV of 1867,[1] or to the capitation-tax, or the land-rate in lieu thereof, levied in British Burma[2] under the Burma Land and Revenue Act, 1876.[3]

II of 1876.

Indemnity.

49. Every person deducting, retaining or paying any tax in pursuance of this Act or of any arrangement under section 9, sub-section (*2*), in respect of income belonging to another person, is hereby indemnified for the deduction, retention or payment thereof.

Powers exercisable from time to time.

50. All powers conferred by, or conferable under, this Act may be exercised from time to time as occasion requires.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1878 .	The Northern India License Act, 1878.	So much as has not been repealed.
Act No. VI of 1880 .	The Indian License Acts Amendment Act, 1880.	The whole.

ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878 .	The Madras License Act, 1878 . .	So much as has not been repealed.
Act No. III of 1880 .	An Act to amend Madras Act III of 1878, as amended by Act VI of 1880.	The whole.

[1] Printed, Central Provinces Code, Ed. 1891, p. 30.
[2] This reference to British Burma should now be read as referring to Lower Burma, *see* the Upper Burma Laws Act, 1886 (XX of 1886), s. 4, printed, Burma Code, Ed. 1889, p. 368.
[3] Printed, Burma Code, Ed. 1889, p. 102.

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THE FIRST SCHEDULE—*continued.*

Act of the Governor of Bombay in Council.

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878 .	The Bombay License Act, 1878 . .	So much as has not been repealed

Act of the Lieutenant-Governor of Bengal in Council.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1880 .	The Bengal License Act, 1880 . .	The whole.

THE SECOND SCHEDULE.

Sources of Income and Rates of Tax.

(*See section 4.*)

First column.	Second column.
Source of Income.	Rate of Tax.
PART I.	
Salaries and Pensions.	
1. Any salary, annuity, pension or gratuity paid in British India to or on behalf of any person residing in British India or serving on board a ship plying to or from British Indian ports, whether on account of himself or another person. 2. Any salary, annuity, pension or gratuity paid by the Government, or by a local authority established in the exercise of the powers of the Governor General in Council in that behalf, to or on behalf of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty.	(*a*) If the income amounts to Rs. 2,000 per annum, or Rs. 166-10-8 pre mensem, or upwards—five pies in the rupee. (*b*) If the income is less than Rs. 2,000 per annum, or Rs. 166-10-8 per mensem—four pies in the rupee.

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THE SECOND SCHEDULE—*continued.*

First column.	Second column.
Source of Income.	Rate of Tax.
PART II.	
Profits of Companies.	
Profits of a company .	Five pies in the rupee on the whole of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then on the whole of the nett profits so made during the year ending on the said thirty-first day of March.
PART III.	
Interest on Securities.	
Interest becoming due on or after the first day of April, 1886, and payable in British India, on— (*a*) promissory notes, debentures, stock or other securities of the Government of India (including securities of the Government of India whereon interest is payable out of British India by draft on any place in British India), or (*b*) [*Rep. by Act XII of 1891.*][1] (*c*) debentures or other securities for money issued by or on behalf of a local authority or company.	Five pies in the rupee on such interest, unless the owner of the security produces a certificate signed by the Collector that his annual income from all sources is less than Rs. 500, in which case no deduction shall be made from the interest, or unless he produces a like certificate that his income from all sources is less than Rs. 2,000, in which case the rate shall be four pies in the rupee.
PART IV.	
Other Sources of Income.	
Any source of income not included in Part I, Part II or Part III of this schedule.	(*a*) If the annual income is assessed at— not less than Rs. 500 but less than Rs. 750 the tax shall be Rs. 10 " " " 750 " " 1,000 " " 16 " " " 1,000 " " 1,250 " " 20 " " " 1,250 " " 1,500 " " 28 " " " 1,500 " " 1,750 " " 35 " " " 1,750 " " 2,000 " " 42 (*b*) If the annual income is assessed at Rs. 2,000 or upwards—five pies in the rupee on the income.

[1] Printed, General Acts, Vol. VI.

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THE THIRD SCHEDULE.

FORM OF PETITION.

(See section 25.)

TO THE COLLECTOR OF

The *day of* *188* .

The petition of *A. B.* of .

SHEWETH as follows—

1.—Under Act No. II of 1886, your petitioner has been assessed in the sum of
rupees for the year commencing the first day of April, 188 .

2.—Your petitioner's income and profits accruing and arising from [*here specify petitioner's trade or other source or sources of income or profits, and the place or places at which such income or profits accrues or arise*] for the year ending the
day of last were rupees
[as will appear from the documents of which a list is presented herewith*].

3.—Such income and profits actually accrued and arose during a period of months and
days [*here state the exact number of months and days in which the income and profits accrued and arose*].

4.—During the said year your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly [*or* that he may be declared not to be chargeable under the said Act].

(Signed) *A. B.*

Form of Verification.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) *A. B.*

* *These words are to be inserted if the petitioner relies on documents. The list, if the petitioner so wishes, may be presented in a sealed envelope.*

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ACT No. IV OF 1886.[1]

[*29th January, 1886.*]

An Act to amend section 265 of the Indian Contract Act, 1872.[2]

WHEREAS it is expedient to amend section 265 of the Indian Contract Act, 1872; It is hereby enacted as follows:—

IX of 1872.

1. For section 265 of the said Act the following shall be substituted, namely:—

New section substituted for section 265, Indian Contract Act. Winding up by Court on dissolution or after termination.

"265. Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts and distribute the surplus according to the shares of the partners respectively."

2. [*Repeal of part of section 213, Act XIV, 1882.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*[3]

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT, 1886.[4]

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For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 135; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 47; and for Proceedings in Council, *see ibid*, 1885, Supplement, pp. 186 and 335, and *ibid*, 1886, Supplement, p. 204.

The Act is in force in Upper Burma (except the Shan States) as being part of the original Act IX of 1872, declared in force there by the Burma Laws Act, 1898 (XIII of 1898), *see* s. 4 and the First Schedule.

The Act had been previously declared in force in the Town of Mandalay only, in Upper Burma by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 (*1*), now repealed by Act XIII of 1898. S. 1 of the Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), s. 2, printed, Bengal Code, Vol. I, Ed. 1889, p. 597.

This Act is in force in British Baluchistan as being part of the Indian Contract Act, 1872 (IX of 1872), which was thereto applied, by the British Baluchistan Laws Regulation, 1890 (I of 1890), *see* Baluchistan Code, Ed. 1890, p. 72.

[2] Printed, General Acts, Vol. II, Ed. 1898, p. 299.

[3] Printed, General Acts, Vol. VI.

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ACT No. VI OF 1886.[1]

[*8th March, 1886.*]

An Act to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872,[2] or the Indian Christian Marriage Act, 1872,[2] and of certain marriages registered under the Parsi Marriage and Divorce Act, 1865,[3] and for

XV of 1872.
XV of 1865.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 12; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 103; and for Proceedings in Council, *see ibid*, 1885, Supplement, pp. 14 and 87, and *ibid*, 1886, p. 290.
[2] Printed, General Acts, Vol. II, Ed. 1898, pp. 280 and 378, respectively.
[3] Printed, General Acts, Vol. I, Ed. 1898, p. 562.

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the establishment of general registry offices for keeping registers of those births, deaths and marriages ;

And whereas it is also expedient to provide for the authentication and custody of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the registers were kept, and to declare that copies of the entries in those registers shall be admissible in evidence ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the Births, Deaths and Marriages Registration Act, 1886 ; and

(*2*) It shall come into force on such day [1] as the Governor General in Council, by notification in the Gazette of India, directs.[2]

Local extent.

2. This Act extends to the whole of British India [3] and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

"sign" includes mark, when the person making the mark is unable to write his name :

"prescribed" means prescribed by a rule made by the Governor General in Council under this Act : and

"Registrar of Births and Deaths" means a Registrar of Births and Deaths appointed under this Act.

Saving of local laws.

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas.

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[1] The 1st October, 1888, *see* Gazette of India, 1888, Pt. I, p. 336.

[2] Sub-sec. (*3*) of s. 1, which was repealed by the Repealing and Amending Act, 1891 (XII of 1891), was as follows :—

"(*3*) Any power conferred by the Act to make rules or to issue orders may be exercised at any time after the passing of this Act ; but a rule or order so made or issued shall not take effect until the Act comes into force."

[3] It has been extended to the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597, *see* Calcutta Gazette, 1889, Pt. I, p. 176. It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (I of 1880), s. 3, printed, Baluchistan Code, Ed. 1890, p. 69.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), *see* the First Schedule and s. 4. It had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Gazette of India, 1888, Pt. I, p 528.

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5. All powers conferred by this Act may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

CHAPTER II.

General Registry Offices of Births, Deaths and Marriages.

Establishment of general registry offices and appointment of Registrars General.

6. (*1*) Each Local Government—

(*a*) shall establish a general registry office for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872[1] (*to provide a form of marriage in certain cases*) or the Indian Christian Marriage Act, 1872,[1] or, beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Bombay, under the Parsi Marriage and Divorce Act, 1865,[2] as may be sent to it under this Act, or under any of the three last-mentioned Acts, as amended by this Act;[3] and

XV of 1872.

XV of 1865.

(*b*) may appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration :[4]

(*2*) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, establish two general registry offices and appoint two Registrars General of Births, Deaths and Marriages for the territories under his administration; one of such general registry offices and of such Registrars General being established and appointed for Sindh and the other for the other territories under the administration of the Governor of Bombay in Council.

Indexes to be kept at general registry office.

7. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act,

[1] Printed, General Acts, Vol. II, Ed. 1898, pp. 280 and 373, respectively.
[2] Printed, General Acts, Vol. I, Ed. 1898, p. 562.
[3] For General Registry Offices appointed for—
(*a*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 465.
(*b*) Burma, *see* Burma Gazette, 1897, Pt. I, p. 459.
(*c*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 121.
[4] For Registrars General appointed for—
(*a*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 466.
(*b*) Burma, *see* Burma Gazette, 1888, Pt. I, p. 459.
(*c*) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 245.
(*d*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 208.
(*e*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 121.

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or under Act III of 1872,[1] the Indian Christian Marriage Act, 1872,[1] or the Parsi Marriage and Divorce Act, 1865,[2] as amended by this Act, to be made and kept in his office in the prescribed form. XV of 1872. XV of 1865.

Indexes to be open to inspection.

8. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the registers to which the indexes relate shall be given to all persons applying for them.

Copies of entries to be admissible in evidence.

9. A copy of an entry given under the last foregoing section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer authorised in this behalf by the Local Government,[3] and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Superintendence of Registrars by Registrar General.

10. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

CHAPTER III.

Registration of Births and Deaths.

A.—Application of this Chapter.

Persons whose births and deaths are registrable.

11. (*1*) The persons whose births and deaths shall, in the first instance, be registrable under this Chapter are the following, namely :—

(*a*) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865,[2] applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion; X of 1865.

(*b*) in the dominions of Princes and States in India in alliance with Her Majesty, British subjects being members of a like race, sect or tribe, or professing the Christian religion :

(*2*) But the Local Government, by notification in the official Gazette, may, with the previous approval of the Governor General in Council, extend

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[1] Printed, General Acts, Vol. II, Ed. 1898, pp. 280 and 373, respectively.
[2] Printed, General Acts, Vol. I, Ed. 1898, p. 562.
[3] For officer authorized to certify copies of entries given under s. 8 in—
(*a*) Assam, *see* p. 263 of the Assam Manual of Local Rules and Orders, Ed. 1893.
(*b*) Bombay, *see* p. 466 of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896.
(*c*) Madras, *see* p. 218 of the Madras List of Local Rules and Orders, Vol. 1, Ed. 1898.

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the operation of this Chapter to any other class of persons either generally or in any local area.

B.—Registration Establishment.

[1] **12.** The Local Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may define and, if it sees fit, for any class of persons within any part of those territories.

Power for Local Government to appoint Registrars for its territories.

13. The Governor General in Council may, by notification in the Gazette of India, appoint, either by name or by virtue of their office, so many persons as he thinks necessary to be Registrars of Births and Deaths for such local areas within the dominions of any Prince or State in India in alliance with Her Majesty as he may define and, if he sees fit, for any class of persons within any part of those dominions.[2]

Power for Governor General in Council to appoint Registrars for Native States.

14. Every Registrar of Births and Deaths shall be deemed to be a public servant within the meaning of the Indian Penal Code.[3]

XLV of 1860.

Registrar to be deemed a public servant.

15. (*1*) The Local Government or the Governor General in Council, as the case may be, may suspend, remove or dismiss any Registrar of Births and Deaths.

Power to remove Registrars.

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[1] As to Registrars appointed under this section for—
(*a*) Assam, *see* Assam List of Local Rules and Orders, Ed. 1893, p. 263.
(*b*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. 1, Ed. 1896, pp. 465-467.
(*c*) Burma, *see* Burma Laws List, Ed. 1897, p. 240.
(*d*) Central Provinces, *see* Central Provinces List of Local Rules and Orders Ed. 1896, p. 246.
(*e*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 218.
(*f*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 121.

[2] For Registrars of Births and Deaths appointed under this section for—
(*1*) Native States in the Bombay Presidency, *see* Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1895, p. 44.
(*2*) States of Puddu Kottai, Banganapalle, and Sandur, *see* Gazette of India, 1889, Pt. I, p. 52.
(*3*) State of Mysore, *see* Gazette of India, 1889, Pt. I, p. 54, and *ibid*, 1893, Pt. I, p. 381.
(*4*) Hyderabad State, *see* Gazette of India, 1889 and 1890, Pt. I, pp. 621 and 468, respectively.
(*5*) Rampur and Tehri States, *see* Gazette of India, 1891, p. 424.
(*6*) Kashmir and Jammu, *see* Northern India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1891, p. 130.
(*7*) Nepal, *see* Northern India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1891, p. 145.
(*8*) Central Provinces Feudatory States, *see* Central India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1893, p. 26, and Gazette of India, 1895, Pt. I, p. 404.
(*9*) States in the Central India Agency, *see* Central India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1893, p. 51.
(*10*) States in the Rajputana Agency, *see* Rajputana Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1891, p. 29, and Gazette of India, 1893, Pt. I, p. 158.

[3] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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(2) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government or to the Governor General in Council, as the case may be, his intention to do so, and, on his resignation being accepted by the Local Government or the Governor General in Council, he shall be deemed to have vacated his office.

Office and attendance of Registrar.

16. (1) Every Registrar of Births and Deaths shall have an office in the local area, or within the part of the territories or dominions, for which he is appointed.

(2) Every Registrar of Births and Deaths to whom the Local Government may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office his name, with the addition of Registrar of Births and Deaths for the local area or class for which he is appointed, and the days and hours of his attendance.

Absence of Registrar or vacancy in his office.

17. (1) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply,[1] not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, or such other officer as the Local Government appoints in this behalf, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(2) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(3) The Registrar General of Births, Deaths and Marriages shall report to the Local Government all appointments made by him under this section.

Register books to be supplied and

18. The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register

[1] The section has been declared by the Government of Madras to apply to all Registrars appointed by that Government, under the notification issued under s. 12, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 218.

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books of deaths; and shall make suitable provision for the preservation of the records connected with the registration of births and deaths.

preservation of records to be provided for.

C.—Mode of Registration.

19. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area or among the class for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book :

Duty of Registrar to register births and deaths of which notice is given.

Provided that—

(*a*) if he has reason to believe the notice to be in any respect false, he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made; and

(*b*) he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child.

20. Any of the following persons may give notice of a birth, namely :—

Persons authorized to give notice of birth.

(*a*) the father or mother of the child;

(*b*) any person present at the birth;

(*c*) any person occupying, at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house;

(*d*) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred;

(*e*) any person having charge of the child.

21. Any of the following persons may give notice of a death, namely :—

Persons authorized to give notice of death.

(*a*) any relative of the deceased having knowledge of any of the particulars required to be registered concerning the death;

(*b*) any person present at the death;

(*c*) any person occupying, at the time of the death, any part of the house wherein the death occurred and having knowledge of the deceased having died in the house;

(*d*) any person in attendance during the last illness of the deceased;

(*e*) any person who has seen the body of the deceased after death.

22. (*1*) When an entry of a birth or death has been made by the Registrar of Births and Deaths under section 19, the person giving notice of

Entry of birth or death to be

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signed by person giving notice.

the birth or death must sign the entry in the register in the presence of the Registrar.

(2) Until the entry has been so signed, the birth or death shall not be deemed to be registered under this Act.

(3) When the birth of an illegitimate child is registered, and the mother and the person acknowledging himself to be the father of the child jointly request that that person may be registered as the father, the mother and that person must both sign the entry in the register in the presence of the Registrar.

Grant of certificate of registration of birth or death.

23. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death.

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

24. (1) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area or class for which he is appointed is situate or resides, at the prescribed intervals, a true copy certified by him, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals:

Provided that in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may, if so directed by his ecclesiastical superior, send the certified copies in the first instance to that superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub-section "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively; and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

(2) The provisions of sub-section (1) shall apply to every Registrar of Births and Deaths in the dominions of any Prince or State in India in alliance with Her Majesty, with this modification that the certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the Governor General in Council, by notification in the Gazette of India, appoints in this behalf.

Searches and copies of entries in register books.

25. (1) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times, allow searches to be made in the register books kept by him, and give a copy of any entry in the same.

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(2) Every copy of an entry in a register book given under this section shall be certified by the Registrar of Births and Deaths, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

Exceptional provision for registration of certain births and deaths.

26. Notwithstanding anything in section 19, the Governor General in Council may make rules[1] authorizing Registrars of Births and Deaths, on conditions and in circumstances to be specified in the rules, to register births and deaths occurring outside the local areas or classes for which they are appointed.

D.—Penalty for False Information.

Penalty for wilfully giving false information.

27. If any person wilfully makes, or causes to be made for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

E.—Correction of Errors.

Correction of entry in register of births or deaths.

28. (*1*) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, he may, subject to such rules[1] as may be made by the Governor General in Council with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

(*2*) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

CHAPTER IV.

Amendment of Marriage Acts.

Addition of new section after section 13, Act III of 1872.

29. After section 13 of Act III of 1872[2] (*to provide a form of marriage in certain cases*) the following section shall be inserted, namely :—

Transmission of certified copies of entries in

"13A. The Registrar shall send to the Registrar General of Births,

[1] For rules made under s. 26 conjointly with ss. 28 and 36, *see* Gazette of India, 1888, Pt. I, p. 336, and *ibid*, 1894, Pt. I, p. 436.
[2] Printed, General Acts, Vol. II, Ed. 1898, p. 280.

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marriage-certificate book to the Registrar General of Births, Deaths and Marriages.

Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council, from time to time directs, a true copy certified by him, in such form as the Governor General in Council, from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals."

Amendment of the Indian Christian Marriage Act, 1872.

30. In the Indian Christian Marriage Act, 1872,[1] the following amendments shall be made, namely:— XV of 1872.

(*a*) at the end of section 3, the words "'Registrar General of Births, Deaths and Marriages' means a Registrar General of Births, Deaths, and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886," shall be added; VI of 1886.

(*b*) for the words "Secretary to the Local Government" wherever they occur, and for the words "Secretary to a Local Government" in section 79, the words "Registrar General of Births, Deaths and Marriages" shall be substituted;

[2](*d*) in section 81, after the words "Registrar General of Births, Deaths and Marriages" the words "in England" shall be added.

Addition of new section after section 8 of the Parsi Marriage and Divorce Act, 1865.

31. After section 8 of the Parsi Marriage and Divorce Act, 1865,[3] the following section shall be inserted, namely:— XV of 1865.

Transmission of certified copies of certificates in marriage register to Registrar General of Births, Deaths and Marriages.

"8A. Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the Governor General in Council from time to time directs, send to the Registrar General of Births, Deaths and Marriages for the territories administered by the Local Government by which he was appointed a true copy certified by him, in such form as the Governor General, from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals."

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS.

Permission.

32. If any person in British India, or in the dominions of any Prince or

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 373.
[2] Cl. (*c*), which amended s. 62 of the Indian Christian Marriage Act, 1872 (XV of 1872), was repealed by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 4 (*2*), printed, General Acts, Vol. VI.
[3] Printed, General Acts, Vol. I, Ed. 1898, p. 562.

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State in India in alliance with Her Majesty, has for the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes referred to in section 11, sub-section (*1*), or of any register or record of marriage of any persons of the classes to which Act III of 1872 [1] or the Indian Christian Marriage Act, 1872,[1] or the Parsi Marriage and Divorce Act, 1865,[2] applies, and if such register or record has been made otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may,[3] [at any time before the first day of April, 1891,] send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within the dominions of any such Prince or State as aforesaid, to such one of the Registrars General as aforesaid as the Governor General in Council, by notification in the Gazette of India, directs in this behalf.

XV of 1872.
XV of 1865.

to persons having custody of certain records to send them within one year to Registrar General.

33. (*1*) The Governor General in Council may appoint so many persons as he thinks fit to be Commissioners for examining the registers or records sent to the Registrar General of Births, Deaths and Marriages under the last foregoing section.

Appointment of Commissioners to examine registers.

(*2*) The Commissioners so appointed shall hold office for such period as the Governor General in Council, by the order of appointment, or any subsequent order, directs.

34. (*1*) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 32;

Duties of Commissioners.

and shall deliver to the Registrar General a descriptive list or descriptive lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(*2*) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(*3*) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the

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[1] Printed, General Acts, Vol. II, Ed. 1898, pp. 280 and 373, respectively.
[2] Printed, General Acts, Vol. I, Ed. 1898, p. 562.
[3] These words were substituted for the words "within one year from the date on which this Act comes into force" by the Births, Deaths, and Marriages Registration Act (1886) Amendment Act, 1890 (XVI of 1890), s. 1, printed, *infra*, p. 470.

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Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

Searches of lists prepared by Commissioners and grant of certified copies of entries.

35. (*1*) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect it or them, and copies of entries in those registers or records shall be given to all persons applying for them.

(*2*) A copy of an entry given under this section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer or person authorized in this behalf by the Local Government,[1] and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

Constitution of additional commissions for purposes of this Chapter.

[2] **35A.** (*1*) The Governor General in Council, if he thinks fit, may, by notification in the Gazette of India, appoint more commissions [3] than one for the purposes of this Chapter, each such commission consisting of so many and such members as he may, by a like notification, nominate thereto by name or by office, and having its functions restricted to the disposal, under this Act and the rules thereunder, of the registers or records sent under section 32 to such Registrar General or Registrars General as the Governor General in Council may, by a like notification, specify in this behalf.

(*2*) If more commissions than one are appointed in exercise of the power conferred by sub-section (*1*), then references in this Act to the Commissioners shall be construed as references to the members constituting a commission so appointed.

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[1] For officers appointed under s. 35 (*2*) for—
(*1*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 471.
(*2*) Burma, *see* Burma Laws List, Ed. 1897, p. 242.
(*3*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 219.

[2] S. 35A was added by the Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (XVI of 1890), s. 2, printed, *infra*, p. 470.

[3] For Commissioners appointed in—
(*1*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 471.
(*2*) Burma, *see* Burma Laws List, Ed. 1897, p. 242.
(*3*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 219.

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CHAPTER VI.

RULES.

Power for Governor General in Council to make rules.

36. In addition to any other power to make rules impliedly or expressly conferred by this Act, the Governor General in Council may make rules[1]—

(*a*) to fix the fees payable under this Act;[2]

(*b*) to prescribe the forms required for the purposes of this Act;

(*c*) to prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice;

(*d*) to prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them;

[3] (*e*) to prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate;

[4] (*f*) to prescribe the custody in which those registers or records are to be kept; and,

[4] (*g*) generally, to carry out the purposes of this Act.

Procedure for making and publication of rules.

37. (*1*) The Governor General in Council shall, before making rules under this Act, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of persons likely to be affected thereby.

(*2*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any

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[1] As to rules made under this section conjointly with ss. 26 and 28, *see* footnote to s. 26, *supra*.

[2] For fees prescribed for attendance at private residences in —

(*1*) Burma, *see* notification quoted in Burma Laws List, Ed. 1897, p. 242.

(*2*) Madras, *see* notification quoted in Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 219.

For rules framed by the Government of India under this clause as to fees, *see* Gazette of India, 1894, Pt. I, p. 580.

[3] For rules for the guidance of Commissioners appointed under Chapter V, *see* Gazette of India, 1890, Pt. I, p. 745.

[4] For rules for the guidance of Commissioners appointed under Chapter V, framed with regard to the powers conferred by these clauses, *see* Gazette of India, 1890 and 1892, Pt. I, pp. 745 and 123, respectively.

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objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under this Act shall be published in the Gazette of India, and the publication in the Gazette of India of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

ACT No. VII OF 1886.[1]

[*8th March, 1886.*]

An Act to amend the Indian Registration Act, 1877.[2]

WHEREAS it is expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby enacted as follows:— III of 1877.

Short title and commencement.

1. (*1*) This Act may be called the Indian Registration Act, 1886; and

(*2*) It shall come into force at once.

Addition to section 17 of Act III of 1877.

2. After clause (*f*) of section 17 of the Indian Registration Act, 1877, the following clause shall be inserted, that is to say:—

"(*ff*) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or".

Addition to sections 17 and 89, and amendment of section 58 of same Act.

3. (*1*) After clause (*l*) of section 17 of the same Act the following clause shall be added, that is to say:—

"(*m*) orders granting loans under the Agriculturists' Loans Act, 1884,[3] and instruments for securing the repayment of loans made under that Act." XII of 1884.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 235; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 106; and for Proceedings in Council, *see ibid*, 1885, Supplement, pp. 898 and 1008, and *ibid*, 1886, Supplement, p. 292.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), s. 2, printed, Bengal Code, Vol. I, Ed. 1889, p. 597.

It is also in force in British Baluchistan as being part of Act III of 1877, which was declared in force, *see* schedules to the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 72.

In like manner the Act is in force in that part of the Khási and Jaintiá Hills District which is comprised within the limits of the Civil Station and Cantonment of Shillong [*see* Gazette of India, 1878, Pt. I, p. 662] and in the Mahál of Angul [*see* Gazette of India, 1887, Pt. I, p. 97].

It is also in force in the Arakan Hill-tracts District [*see* Burma Gazette, 1886, Pt. I, p 247], being a part of Act III of 1877.

[2] Printed, General Acts, Vol. III, Ed. 1898, p. 41.

[3] Printed, General Acts, Vol. IV, Ed. 1898.

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(2) In section 58 of the same Act, for the words "or a copy of a certificate under the Land Improvement Act, 1871,[1] sent by the Collector to be registered," or, where the Land Improvement Loans Act, 1883, is in force, for the words "or a copy of an order under the Land Improvement Loans Act, 1883, sent by the Collector to be registered," there shall be substituted the following words, namely:—

XXVI of 1871. XIX of 1883.

"or a copy sent to a registering officer under section 89."

(3) After the second paragraph of section 89 of the same Act the following paragraph shall be added, that is to say:—

XII of 1884.

"Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1."

Further addition to section 17 of same Act.

4. After clause (*m*) of section 17 of the same Act as amended by this Act the following clause shall be added, that is to say:—

"(*n*) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage".

Amendment of section 50 of same Act.

5. In the second paragraph of section 50 of the same Act, "(*ff*)" shall be inserted between "(*f*)" and "(*g*)", and for the word and letter "and (*l*)" the letters and word "(*l*), (*m*) and (*n*)" shall be substituted.

Addition to section 90, and amendment of section 91, of same Act.

6. (1) After clause (*d*) of section 90 of the same Act the following clause shall be inserted, that is to say:—

Bom. Act V of 1879.

"(*e*) notices given under section 74, or section 76, of the Bombay Land-revenue Code, 1879,[3] of relinquishment of occupancy by occupants, or of alienated land by holders of such land."

(2) In section 91, for the word and letter "and (*c*)" the letters and word "(*c*) and (*e*)" shall be substituted.

(3) The said Act shall be construed as if the amendments made in it by this section had been made at the time the Act came into force.

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[1] Rep. by the Land Improvement Loans Act, 1883 (XIX of 1883) and the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. IV, Ed. 1898, and *ibid*, Vol. VI, respectively.

[2] Printed, General Acts, Vol. IV, Ed. 1898.

[3] Printed, Bombay Code, Vol. II, Ed. 1896, pp. 326 and 327.

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ACT No. X OF 1886.[1]

[*12th March, 1886.*]

An Act to amend the Code of Criminal Procedure, 1882,[2] and certain other Acts.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882,[2] and certain other Acts ; It is hereby enacted as follows :— X of 1882.

1-19. [*Amendment of certain sections of the Code of Criminal Procedure, 1882 (Act X of 1882).*] *Rep. by the Code of Criminal Procedure, 1898 (Act V of 1898).*

20. [*Amendment of Bombay District Police Act (Bom. Act VII of 1867).*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*[3]

Indian Penal Code.[4]

Amendment of sections 40 and 64 of the Indian Penal Code.

21. (*1*) In the second clause of section 40 of the Indian Penal Code,[4] between the figures " 66 " and " 71 " the figures " 67 " shall be inserted. XLV of 1860.

(*2*) In the second clause of section 64 of the same Code, after the word " punishable " the words " with imprisonment or fine, or " shall be inserted.

Amendment of section 75 of the Indian Penal Code.

22. In section 75 of the same Code, for the words " or to double the amount of punishment " to the end of the section, the following shall be substituted, namely :—

" or to imprisonment of either description for a term which may extend to ten years."

Addition to section 216 of the Indian Penal Code.

23. After the first paragraph of section 216 of the same Code the following shall be inserted, namely :—

" ' Offence ' in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881,[5] or otherwise, liable to be apprehended or detained in 44 & 45 Vict., cap. 69.

[1] Short title, "The Indian Criminal Law Amendment Act, 1886," *see* the Indian Short Titles Act, 1897 (XIV of 1897).

For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 249 ; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 10 ; and for Proceedings in Council, *see ibid*, 1885, Supplement, pp. 1141 and 1180, and *ibid*, 1886, Supplement, p. 417.

Ss. 21 to 25 inclusive have been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597.

So much as it amends the Indian Penal Code and Act V of 1871, this Act is in force in Upper Burma (except the Shan States) as being part of those two original Acts declared in force there by s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898). Ss. 21 to 25 of the Act had previously been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), now repealed by Act XIII of 1898.

[2] Rep. by the Code of Criminal Procedure, 1898 (Act V of 1898).

[3] Printed, General Acts, Vol. VI.

[4] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

[5] Printed, Supplement to the Collection of Statutes relating to India, Ed. 1881, p. 128.

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custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India."

Substitution of new sections for section 225A of the Indian Penal Code, and repeal of section 651 of the Code of Civil Procedure.

24. (*1*) For section 225A of the same Code the following sections shall be substituted, namely :—

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.

"225A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(*a*) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

"225B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

(*2*) [*Repeal of section 651 of the Code of Civil Procedure* (*Act XIV of 1882*).] *Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).

Prisoners Act, 1871.

V of 1871.

Substitution of new sections for sections 30, 31 and 32 of the Prisoners Act.

25. For sections 30,[1] 31 and 32[1] of the Prisoners Act, 1871, the following shall be substituted, namely :—

* * * * * * *

Removal of

"31. (*1*) Whenever it appears to the Local Government that any person

[1] Ss. 30 and 32 enacted by this Act are not reproduced as new sections were subsequently substituted for them by ss. 6 and 7 of the Prisoners Act (1879) Amendment Act, 1894 (VII of 1894), printed, General Acts, Vol. VI.

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lunatic prisoner.

detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, that Government, by a warrant setting forth the grounds of belief that the person is of unsound mind, may order his removal to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, there to be kept and treated as the Local Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

"(*2*) When it appears to the Local Government that the prisoner has become of sound mind, that Government, by a warrant directed to the person having charge of the prisoner, shall, if the prisoner is still liable to be kept in custody, remand him to the prison from which he was removed or to another prison within the territories subject to the same Local Government, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

"(*3*) The provisions of section 9 of Act XXXVI of 1858[1] (*relating to Lunatic Asylums*) shall apply to every person confined in a lunatic asylum under sub-section (*1*) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Magistrate or Court to undergo.

"(*4*) In any case in which a Local Government is competent under sub-section (*1*) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, the Governor General in Council may order his removal to any lunatic asylum or other place of safe custody in any part of British India; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of a Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor General in Council.

* * * * * *[2]

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[1] Printed, General Acts, Vol I, Ed. 1898, p. 156.
[2] *See* footnote on preceding page

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THE INDIAN TRAMWAYS ACT, 1886.

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ACT No. XI OF 1886.[1]

[*12th March, 1886.*]

An Act to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. (*1*) This Act may be called the Indian Tramways Act, 1886; and

(*2*) It shall come into force at once.

Local extent.

2. (*1*) It extends in the first instance to the whole of British India except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal.

(*2*) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.[2]

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

(*2*) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorized under this Act is, or is intended to be, laid, and includes the surface-soil and subsoil of a road, and the footway, berms, drains and ditches of a road, and any bridge, culvert or causeway forming part of a road:

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 308; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 131; and for Proceedings in Council, *see ibid*, 1885, Supplement, p. 1544; and *ibid*, 1886, Supplement, pp. 7 and 418.

[2] The Act has been extended to the whole of Bombay, except the city of Bombay, and the town of Karachi and its suburbs, *see* Bombay Gazette, 1887, Pt. I, p. 899; it has also been extended to the city of Madras, *see* Fort St. George Gazette, 1886, Pt. I, p 750.

It has been declared in force in Upper Burma (except the Shan States) by s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898).

Rangoon possesses a separate Act, the Rangoon Tramways Act, 1883 (XXII of 1883), Burma Code, Ed. 1889, p. 211.

Ibid, Lahore, *see* the Lahore Tramways Act, 1886 (I of 1886), Punjab Code, Ed. 1888, p. 258

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(*3*) "road-authority", in relation to a road, means—

(*a*) if a local authority maintains and repairs the road, then that authority;

(*b*) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(*c*) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

(*4*) "circle", in relation to a local authority or road-authority, means the area within the control of that authority:

(*5*) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway:

(*6*) "order" means an order authorizing the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

(*7*) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and by the order and any rules made under this Act as to the construction, maintenance and use of the tramway, have devolved:

(*8*) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(*9*) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power:

(*10*) "toll" includes any charge leviable in respect of the use of a tramway:

(*11*) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorized tolls:

(*12*) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(*13*) "District Court" means a principal Civil Court of original jurisdiction, and includes a High Court having ordinary original civil jurisdiction:

(*14*) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act: and

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(*15*) "prescribed" means prescribed by rules made by the Local Government under this Act.

Orders authorizing the Construction of Tramways.

Application for and consent necessary to making of order.

4. (*1*) The Local Government may make an order authorizing the construction of a tramway in a circle on application made—

(*a*) by the local authority of the circle with the consent of the road authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not itself the road-authority; or

(*b*) by any person with the consent of the local authority of the circle, and of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not the road-authority:

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor General in Council.

(*2*) A local authority shall not make an application for an order or be[1] deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

Consent of local or road authority not necessary in certain cases.

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, or attaches conditions to its consent, the Local Government may, nevertheless, make an order authorizing the construction of the tramway in the circle, or by the order impose on the promoter any conditions which it deems fit, if, after considering the reasons of the authority for withholding its consent or attaching the conditions thereto, it is satisfied that the construction of the tramway in the circle is expedient, or, as the case may be, that the conditions attached by the authority to its consent ought not to be imposed.

Procedure for making order.

6. (*1*) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorizing the construction of the tramway.

[1] For rules made under this sub-section conjointly with s. 24 (*1*) (*j*) for Burma, *see* the Burma Rules Manual, Ed. 1897, p. 154.

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(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly.

(4) Every order [1] authorizing the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any; and that publication shall be conclusive proof that the order has been made as required by this section.

Contents of order.

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say :—

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

(c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway

[1] For orders issued under this section in—
(1) the Bombay Presidency, *see* the Bombay List of Local Rules and Orders, 1896, Vol. I, pp. 472 and 478;
(2) Burma, *see* Burma Gazette, 1891, Pt. I, p. 225;
(3) the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 220;
(4) North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 122.

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or any part thereof, and the method of, and materials to be used in, the reinstating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

(*d*) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriageway over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

(*e*) the space which shall ordinarily intervene between the outside of the carriageway on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

(*f*) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may from time to time require;

(*g*) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter; the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads; and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety or convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

(*h*) the application of material excavated by the promoter in the construction or maintenance of the tramway;

(*i*) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorized by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

(*j*) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to

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which the tramway and the traffic thereon may be interfered with in the exercise thereof;

(*k*) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes, water-pipes or other things as aforesaid;

(*l*) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid, or by reason of the use of the road being interrupted by floods or other cause;

(*m*) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

(*n*) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety or convenience of the public;

(*o*) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;

(*p*) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

(*q*) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

(*r*) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

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(*e*) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

(*3*) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870,[1] in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

X of 1870.

(*4*) The order shall imply the condition—

(*a*) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided; and

(*b*) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorized tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

Further order.

8. (*1*) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

(*2*) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(*3*) The Local Government may, in its discretion, either grant or reject the application.

(*4*) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

Power to authorize joint work by local authorities.

9. (*1*) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(*2*) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate

[1] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI.

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parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

Cessation of powers given by an order.

10. (*1*) If a promoter authorized by an order to construct a tramway—

(*a*) does not within the time specified in the order substantially commence the construction of the tramway, or

(*b*) having commenced the construction suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(*c*) does not within the time specified in the order complete the tramway and open it for public traffic,

the following consequences shall ensue :—

(i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;

(ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;

(iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of the working whereof the discontinuance has been proved to the satisfaction of the Local Government.

(*2*) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

11. A tramway shall be constructed and maintained in the manner provided by the order.

Inspection of tramway before opening.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic

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13. Subject to the provisions of any order for the time being in force with respect to the matters mentioned in section 7, sub-section (*2*), clause (*g*), the road-authority and the promoter may from time to time enter into agreements as to the keeping in repair of the whole or a part of a road traversed by a tramway, and as to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Agreement between road-authority and promoter as to repair of roadway.

Traffic on Tramways.

14. (*1*) The promoter of a tramway shall, subject to the provisions of sub-section (*2*) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

Rights of promoters and the public over tramways.

Provided that nothing in this Act or in the order or any rule made under this Act shall affect the right of any person authorized to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(*2*) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway:

Provided—

(*a*) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter; and

(*b*) that the Local Government may by an order authorize the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (*1*) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or, if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

Tolls leviable by promoter or lessee.

(*2*) A list of all the tolls authorized to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

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Carriage of dangerous or offensive goods.

16. (*1*) A person shall not be entitled to carry or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(*2*) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(*3*) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(*4*) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

(*5*) Where a servant of the promoter or lessee refuses under sub-section (*4*) to carry a parcel which has been received for the purpose of being carried upon the tramway, he shall, as soon as may be, give notice of his refusal to the consignor or consignee if he refuses at a time when neither of them is present.

Licenses to use Tramways.

Grant to third parties of licenses to use tramway in certain events.

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after considering any statement which the promoter or lessee or both may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and to the order and the rules made under this Act, subject to the following provisions, namely :—

(*a*) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;

(*b*) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;

(*c*) the license shall specify the number of carriages which the licensee

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shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;

(*d*) the licensee and his officers and servants shall permit one person, duly authorized for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey;

(*e*) any provision of this Act, or of the order or rules made under this Act, relating to the functions of a servant of a promoter or lessee shall be construed, so far as may be, as referring to a servant of the licensee; and

(*f*) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

Licensee to give to promoter or lessee an account of traffic.

18. A licensee shall, on demand, give to an officer or servant authorized in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Discontinuance of Tramways.

Cessation of powers of promoter and lessee on discontinuance of tramway.

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been practically discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof of which the working has been so discontinued, shall, from the date of the notification, be at an end; and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

Powers of road-authority on cessation of

20. (*1*) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway of which

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powers of promoter.

the working has been so discontinued, and use the materials thereof in reinstating the road.

(*2*) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in reinstating the road.

(*3*) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(*4*) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in reinstating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

Insolvency of Promoter.

Proceedings in case of insolvency of promoter.

21. (*1*) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or to work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after considering any statement which the promoter may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

(*2*) Where a notification has been published under sub-section (*1*), the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal and to the same

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remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

Future purchase of undertaking by local authority.

22. (*1*) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

(*a*) within such limits of time as may be specified in this behalf in the order, or

(*b*) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or

(*c*) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(*2*) A requisition shall not be made under sub-section (*1*) unless the making thereof has been approved by the local authority in manner prescribed.

(*3*) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway has been constructed by it under an order made under this Act.

(*4*) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

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Working of Tramways owned by Local Authorities.

Lease of, or working of, tramway by local authority.

23. (*1*) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorized tolls.

(*2*) On the determination of a lease the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(*3*) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has practically discontinued the working of the tramway leased, or of any part thereof, for the space of one month without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(*4*) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(*5*) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorized tolls in respect of the use of the carriages.

Rules.

Power to make rules.

[1] **24.** (*1*) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

(*a*) as to the form in which an application for an order shall be made;

(*b*) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;

(*c*) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (*4*), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities

[1] For rules made for Burma under clauses (*b*), (*c*), (*d*), (*f*), (*g*) and (*h*) of sub-section (*1*) of this section, *see* Burma Rules Manual, Ed. 1897, p. 155.

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so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter; and the forfeiture, repayment or return of the money or securities;

(*d*) as to the plans and section of any works to be deposited by applicants for orders or by promoters;

(*e*) for regulating the use of steam-power or any other mechanical power on a tramway;

(*f*) as to any matter specified in section 7, sub-section (*2*), clauses (*c*), (*d*), (*e*), (*j*) and (*k*), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;

(*g*) as to the periodical submission, by promoters, lessees and licensees, of accounts of traffic and receipts to the Local Government or as that Government directs, and as to the forms in which those accounts are to be submitted;

(*h*) as to the accidents of which report is to be made to the Local Government or as that Government directs;

(*i*) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,

(*j*) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for carrying out the purposes of this Act.[1] [2]

(*2*) A local authority may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and with the order and any rules[3] made by the Local Government under this Act for regulating—

(*a*) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;

(*b*) the use of animal power on the tramway;

(*c*) the distances at which carriages using the tramway are to be allowed to follow one after the other;

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[1] As to rules made for Burma under this clause conjointly with s. 4 (*2*), *see* footnote to that section, *supra*, p 75.

[2] For rules made for Burma under this clause conjointly with s. 26 (*2*), *see* footnote to that section, *infra*.

[3] For instance of rules made under this power, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 122.

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(*d*) the stopping of carriages using the tramway, and the notice to be given to the public of their approach ;

(*e*) the manner in which carriages using the tramway after sunset and before sunrise are to be lighted ;

(*f*) the traffic on roads along or across which the tramway is laid ;

(*g*) the number of passengers which may be carried in any carriage ;

(*h*) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee ; and,

(*i*) generally, the mode of use of the tramway.

(*3*) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and with the order and any rules made under this Act—

(*a*) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises, belonging to him ; and

(*b*) for regulating the travelling in any carriage belonging to him.

(*4*) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under this section.

Power to impose penalty by rule.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend,—

(*a*) if the authority making the rule is the Local Government, to two hundred rupees, and,

(*b*) if that authority is a local authority or a promoter or lessee, to twenty rupees ;

and, when the breach is a continuing breach, with a further fine which may extend,—

(*c*) if the authority making the rule is the Local Government, to fifty rupees, and,

(*d*) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

Procedure for making, and publication of, rules.

26. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.[1]

[1] For rules as to mode of publication in Burma, *see* Burma Rules Manual, Ed. 1897, p. 157.

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(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

Offences.

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

27. If a promoter—

(a) constructs or maintains a tramway otherwise than in accordance with the order, or

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12, or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order,

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order,

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on complaint made by the Local Government or by the local authority or road-authority or by the District Magistrate or, with the previous sanction of the District Magistrate, by any person injuriously affected by the act or omission, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

Penalty for obstructing promoter in exercise of his powers.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

Penalty for interfering with tramway.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely :—

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith, or

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(*b*) places or throws upon or across any such tramway any wood, stone, refuse or other thing, or

(*c*) does anything in such a manner as to obstruct any carriage using any such tramway, or

(*d*) abets within the meaning of the Indian Penal Code[1] the doing of, or attempts to do, anything mentioned in clause (*a*), clause (*b*) or clause (*c*), XLV of 1860.

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

Penalty for using tramway with carriage having flange-wheels.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of proper toll.

31. (*1*) If any person travelling or having travelled in a carriage of the promoter or lessee or of a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(*2*) When a person commits an offence under this section and refuses on demand of a servant of the promoter, lessee or licensee to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call to his aid.

(*3*) When the person is taken to the police-station he shall with the least possible delay be forwarded to the nearest Magistrate, unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Penalty for taking or sending dangerous or offensive goods without giving notice.

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

Penalty for licensee not giving to

33. (*1*) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

promoter or lessee an account of traffic or giving false account.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it:

Saving of prosecutions under other laws.

Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

35. (1) If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order or the rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or the rules made under this Act, and not otherwise expressly provided for therein, the matter in difference shall, except where the parties elect to proceed under section 523 of the Code of Civil Procedure,[1] be settled, on the application of either party, by a referee.

Differences between promoters or lessees and authorities.

XIV of 1882.

(2) Where the difference is—

(a) between the promoter or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, or

(b) between the promoter on the one hand and the local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22,

the referee shall be the District Court within the jurisdiction of which the

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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tramway is situate, or where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(*3*) In other cases the referee shall be appointed by the Local Government.

(*4*) Except where the referee is the District Court, the powers and procedure of the referee may be prescribed.

(*5*) In the case of a difference between a promoter on the one hand and a local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22, an appeal shall lie to the High Court from the award of the referee as from an original decree of the District Court.

(*6*) In the case of every other difference the award of the referee shall be final.

Recovery of Tolls.

Recovery of moneys due from promoters and, in certain cases, from lessees.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or by an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy that the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorize the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

Recovery of tolls from licensees.

37. (*1*) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(*2*) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or

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other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(*3*) When application is made to a Magistrate under sub-section (*1*), he may make an interim order of distraint pending his final decision.

38. Any tolls due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate. **Recovery of tolls from passengers.**

Savings.

39. (*1*) Notwithstanding anything contained in this Act, or in an order or any rule made under this Act, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramwy, nor shall anything contained in this Act, or in an order or any rule made under this Act, exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid. **Promoter to have right of user only.**

(*2*) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

40. (*1*) Nothing in this Act, or in an order or any rule made under this Act, shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid. **Saving of power over roads traversed by tramways.**

(*2*) The road-authority, local authority or other person executing any work referred to in sub-section (*1*) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

41. Nothing in this Act, or in an order or any rule made under this Act, shall affect the powers of a local authority or of a Magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, Magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons. **Saving of power of local authority and police to regulate traffic on roads.**

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Supplemental Provisions.

Promoters, lessees and licensees to be responsible for all injuries.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

Want of funds not a sufficient reason for default.

43. For the purposes of this Act want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

Power to exempt from municipal taxation.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter, lessee or licensee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

Application by local authorities of local funds to tramways.

45. (*1*) The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any enactment respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in, or exercised by, a local authority under this Act.

(*2*) The fund shall also be applicable, with the previous sanction of the Local Government, to a guarantee of the payment of interest on money to be applied, with the concurrence in writing of the local authority, within the limits of the local area under its control, to any of the purposes to which the fund might be applied by the local authority under sub-section (*1*).

Extension of Act to existing tramways.

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter and his lessee (if any), extend any part of this Act, or any rules made under this Act, either with or without modification, to the whole or any part of a tramway constructed, or authorized by the Local Government to be constructed, before the passing of this Act, and may withdraw any part of the Act or any rules so extended.

Prohibition of construction of tramways except under this Act.

47. (*1*) A tramway of which the construction has not been authorized by the Local Government before the passing of this Act shall not, after the passing of this Act, be constructed for public traffic in any place to which this Act extends, except in pursuance of an order made under this Act.

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(*2*) A person constructing a tramway in contravention of sub-section (*1*) of this section,

or after the passing of this Act maintaining or using for public traffic, otherwise than in pursuance of an order made under this Act, a tramway which was not constructed, or authorized by the Local Government to be constructed, before the passing of this Act,

shall be liable, on the complaint of the Local Government or local authority, to double the penalty to which a promoter acting otherwise than in accordance with an order is liable under section 27.

Transfer of control on exclusion of local area from circle of local authority.

48. If at any time a local area comprising a tramway to which this Act or any part thereof or any rule thereunder applies ceases to be included in the circle of a local authority, the functions of that authority under this Act, or the part thereof or the rule thereunder, and under the order (if any), shall, in respect of that local area, devolve on the Local Government or, if that Government so directs, on the local authority of the circle in which the tramway has been included.

49. [*Explanation and amendment of section 54 of Railway Act.*] *Rep. by the Indian Railways Act, 1890 (IX of 1890).*[1]

Powers of Local Government exercisable from time to time.

50. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

THE PETROLEUM ACT, 1886.

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[1] Printed, *infra*, p. 410.

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THE SCHEDULE.

ACT No. XII OF 1886.[1]

[*12th March, 1886.*]

An Act to regulate the importation, possession and transport of petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

Short title, commencement and local extent.

1. (*1*) This Act may be called the Petroleum Act, 1886; and

(*2*) It shall come into force on such day[2] as the Governor General in Council, by notification in the Gazette of India, appoints.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 155; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 140; and for Proceedings in Council, *see ibid*, 1885, Extra Supplement, p. 29, Supplement, p. 845, and Supplement, 1886, p. 417.

[2] The 2nd August, 1890, *see* Gazette of India, 1890, Pt. I, p. 595.

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(*3*) [1] [Sections 1 to 4 of this Act and the provisions] relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India.[2] The rest of this Act extends only to such local areas as the Local Government may from time to time, by notification in the official Gazette, direct.[3]

(*4*) Any power conferred by this Act to make rules or issue orders may be exercised at any time after the passing of this Act; but a rule or order so made or issued shall not take effect until the Act comes into force.

Repeal.

2. (*1*) On and from the day [4] on which this Act comes into force, the Petroleum Act, 1881, shall be repealed: VIII of 1881.

(*2*) But all notifications issued, rules made, licenses granted, powers conferred and certificates given under that Act shall, so far as may be, be deemed to have been issued, made, granted, conferred and given under this Act.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

[5] (*1*) "petroleum" includes also—

(*a*) the liquids commonly known by the names of rock oil, Rangoon oil, Burma[6] oil, kerosine, paraffin oil, mineral oil, petroline, gasoline, benzol, benzoline and benzine;

(*b*) any inflammable liquid which is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any product of petroleum; and

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[1] These words and figures were substituted for the words "The provisions of this Act" by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI.

[2] The whole Act has been declared in force in Upper Burma (except the Shan States) by s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898).

So much of the Act as relates to dangerous petroleum and the importation of petroleum, was applied to the Santhál Parganas under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597, by Notification No. 137-M., dated 29th May, 1891, *see* Calcutta Gazette, 1891, Pt. I, p. 559.

The same provisions were also declared, by notification under s. 3(*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, to be in force in the Chutiá Nágpur Division, *see* Gazette of India, 1896, Pt. I, p. 625.

They have been extended, by notification under s. 5 of the same Act, to the Sindh-Pishin section of the North-Western Railway which lies within British Baluchistan, *see* Gazette of India, 1885, Pt. II, p. 314.

[3] The rest of the Act has been extended to—

(*1*) Karachi and Aden, *see* Bombay Government Gazette, 1890, Pt. I, p. 341;

(*2*) the Municipality and Port of Calcutta and various Suburban Municipalities, *see* Calcutta Gazette, 1889, Pt. I, p. 960;

(*3*) the port and town of Rangoon, the port and town of Maulmain, the port and town of Akyab, the port and town of Bassein and the municipality and cantonment of Mandalay, *see* Burma Rules Manual, Ed. 1897, p. 157;

(*4*) the Central Provinces, *see* Central Provinces Gazette, 1895, Pt. III, p. 374;

(*5*) various places in the Presidency of Fort St. George, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 221.

[4] The 2nd August, 1890, *see* Gazette of India, 1890, Pt. I, p. 95.

[5] This clause was substituted for the original clause by the Petroleum Act, 1898 (VII of 1898), s. 2. The original clause was the same as the new clause, save that it has been broken up into sub-clauses (*a*), (*b*) and (*c*) and the words of sub-clause (*c*) are new.

[6] *See* construction of term "Burma" to which this reference forms the exception, in s. 7 of the Burma Laws Act, 1898 (XIII of 1898).

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(*c*) any liquid or viscous mixture having in its composition any of the liquids aforesaid :

but it does not include any oil ordinarily used for lubricating purposes and having its flashing point at or above two hundred degrees of Fahrenheit's thermometer :

(*2*) "dangerous petroleum" means petroleum having its flashing point below seventy-six degrees of Fahrenheit's thermometer : Provided that, when all or any of the petroleum on board a ship, or in the possession of a dealer, is declared by the master of the ship or the consignee of the cargo, or by the dealer, as the case may be, to be of one uniform quality, the petroleum shall not be deemed to be dangerous if the samples selected from the petroleum have their flashing points, on an average, at or above seventy-three degrees of Fahrenheit's thermometer, and if no one of those samples has its flashing point below seventy degrees of that thermometer :

(*3*) "import" means to bring into British India by sea or land,

and "importation" means the bringing into British India as aforesaid :

(*4*) "transport" means to remove from one place to another within British India ; and

(*5*) "ship" includes anything made for the conveyance by water of human beings or property.

Matters supplemental to the definitions.

4. (*1*) The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested in accordance with the directions in the schedule to this Act with an apparatus which has been stamped and certified as provided by this Act within a period of five years immediately preceding the date on which the apparatus is used for the testing, and after the corrections (if any) which the certificate declares are to be applied to the results of the testing have been made.

(*2*) Notwithstanding anything in the definitions of "import," "importation" and "transport," the Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the official Gazette, declare—

(*a*) that petroleum imported into its territories from any part of British India, by sea or across intervening territory not being part of British India, shall, for all or any of the purposes of this Act, be deemed to be transported ;[1] and

[1] For instance of notifications issued under this power, see Fort St. George Gazette, 1890, Pt. I, pp. 190 and 369.

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(*b*) that petroleum transported into its territories from any place in British India shall, for all or any of those purposes, be deemed to be imported;

and thereupon the provisions of this Act, and of the rules made under this Act, with respect to transport and import, respectively, shall apply to petroleum so imported or transported.

[1] (*3*) The Governor General in Council may, by notification in the official Gazette, alter or add to the schedule to this Act by prescribing new or varied tests, and directions for preparing and using them; and all references in this Act to the schedule, when altered or added to, shall be construed as referring to the schedule as so altered or added to for the time being.

X of 1897. (*4*) The provisions of section 23 of the General Clauses Act, 1897, shall apply to notifications under sub-section (*3*) as if they were rules or orders required to be made after previous publication.

Dangerous Petroleum.

Dangerous petroleum in quantities exceeding forty gallons.

5. (*1*) No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

(*2*) Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of the petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that the petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for that purpose.

(*3*) If the Local Government sees reason to believe that the petroleum will be used for that purpose, and that no petroleum other than dangerous petroleum can be used for the purpose, it may grant the license for the importation, transport or possession (as the case may be) of the petroleum, absolutely or subject to such conditions as it thinks fit.

Dangerous petroleum in quantities not exceeding forty gallons.

6. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of the petroleum kept by any one person or on the same premises,

[1] Sub-secs. (*3*) and (*4*) were added to s. 4 by s. 3 of the Petroleum Act, 1898 (VII of 1898).

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or transported, does not exceed three gallons, and the petroleum is placed in separate glass, stoneware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be labelled.

7. Dangerous petroleum—

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels having attached thereto a label in conspicuous characters stating the description of the petroleum, with the addition of the words "highly inflammable" and with the addition,—

(*d*) in the case of a vessel kept, of the name and address of the consignee or owner;

(*e*) in the case of a vessel transported, of the name and address of the sender; and,

(*f*) in the case of a vessel sold or exposed for sale, of the name and address of the vendor.

Petroleum generally.

Power for Local Government to make rules as to importation and refining of petroleum.

8. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may make rules consistent with this Act to regulate the importation of petroleum [1] and in particular—

(*a*) to determine the ports at which only petroleum may be imported;

(*b*) to ascertain the quantity and description of any petroleum on board any ship;

(*c*) to determine the places at which, and the conditions on and subject to which, petroleum may be discharged into boats, landed, transhipped or stored;

(*d*) to provide for the selection by an officer appointed by the Local Government in this behalf, and for the delivery to him either after or before petroleum has been landed, of samples of all petroleum landed or intended to be landed;

(*e*) to provide, in the case of each consignment which is stated to be of one uniform quality, for the number of samples to be selected, and for the averaging of the results of the testing of those samples;

[1] For rules regulating the importation of petroleum by sea into—

(*a*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxiv, and Bombay Government Gazette, 1898, Pt. I, p. 795;

(*b*) Burma, *see* Burma Rules Manual, Ed. 1897, p. 157, *et seq.*;

(*c*) the Lower Provinces of Bengal, *see* Calcutta Gazette, 1889, Pt. I, p. 960;

(*d*) the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 222.

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(*f*) to provide, where the results of the testing of the samples raise a doubt as to the uniformity of the quality of the petroleum in any such consignment, for the division of the consignment into lots, and for the selection and testing of samples of each lot, and for the treatment of the lot in accordance with the results of the testing of those samples;

(*g*) to fix fees for the sampling and testing of petroleum; and

(*h*) to fix fees for the storage of petroleum unless a body of port commissioners or other like body is empowered in that behalf.

(*2*) The Local Government, with the previous sanction of the Governor General in Council, may, with respect to any petroleum produced within its territories, make rules—

(*a*) to define the limits of the places [1] where the petroleum is to be refined;

(*b*) to provide for the testing of the petroleum at or near those places; and

(*c*) to prevent the removal from those limits, otherwise than under the provisions of this Act applicable to dangerous petroleum, of petroleum which has not satisfied the tests prescribed by the rules.

Procedure after petroleum has been discharged or landed.

9. (*1*) Petroleum discharged into boats or landed in accordance with rules made under section 8, sub-section (*1*), shall not be removed from the boats or places in or at which it is stored until the samples selected therefrom in accordance with those rules have been tested [2] by an officer appointed by the Local Government in this behalf in the manner described in the schedule to this Act, with an apparatus which has been stamped and certified as provided by this Act, and until the officer has given a certificate that the petroleum is not dangerous petroleum.

(*2*) If the officer after testing the samples refuses to give the certificate in respect of any petroleum, the Local Government may permit the consignee, within a time to be fixed by the Local Government in this behalf,—

(*a*) to rectify the petroleum,

(*b*) to apply for a license to import the petroleum as dangerous petroleum, or

(*c*) to re-export the petroleum.

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[1] For notification under this clause, *see* Notification No. 892, dated 22nd November, 1897, Burma Gazette, 1897, Pt. I, p. 638.

[2] For instance of notification appointing testing officers under this power, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 222.

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(*3*) If the consignee does not within the time fixed under sub-section (*2*) avail himself of the permission granted under that sub-section, the petroleum may be disposed of as the Local Government directs.

(*4*) Notwithstanding anything in the foregoing portions of this section, the Local Government in its discretion may, where the officer has refused the certificate, direct that the petroleum be re-tested by another officer appointed by it in this behalf, and may, if that officer advises that the petroleum is not dangerous petroleum, authorise its removal from the boats or places in or at which it is stored.

Possession and transport of petroleum.

10. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Power to make rules as to possession and transport.

11. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may make rules[1] consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

(*2*) The rules may provide for the following among other matters, that is to say:—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of the premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum is to be packed, the mode and time of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

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[1] For rules regulating the grant of licenses to possess and transport petroleum in—

(*a*) Bengal, *see* Calcutta Gazette, 1895, Pt. I, p. 504; *ibid*, 1897, p. 326;

(*b*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1897, p. cxxiv;

(*c*) Burma, *see* Burma Rules Manual, Ed. 1897, p. 167;

(*d*) the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 222.

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(*h*) the conditions which may be inserted in it;

(*i*) the time during which it is to continue in force; and

(*j*) the renewal of the license.

(*3*) The Governor General in Council may make rules consistent with this Act as to the granting of licenses to transport petroleum from any part of British India to any other part of British India in cases where such licenses are by law required; and those rules may provide, among other matters, for those mentioned in sub-section (*2*) as matters for which rules made by a Local Government with respect to licenses to transport petroleum may provide.

Power to inspect and require dealer to sell samples.

12. Any officer specially authorised by name or by virtue of his office in this behalf by the Local Government [1] may require any dealer in petroleum to show him any place and any of the vessels in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of the petroleum on payment of the value of the samples.

Notice to be given when officer proposes to test samples.

13. When any such officer has, in exercise of the powers conferred by section 12, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to the dealer informing him that he is about to test the sample or cause it to be tested with the apparatus and in the manner described in the schedule to this Act, at a time and place to be fixed in the notice, and that the dealer or his agent may be present at the testing.

Certificate as to result of testing.

14. On any such testing, if it appears to the officer or other person so testing that the petroleum from which the sample has been taken is or is not dangerous petroleum, the officer or other person may certify the fact; and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession the petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of the certificate shall be given, free of charge, to the dealer at his request.

Penalties.

Penalty for illegal importation, possession or transport of petroleum.

15. Any person who, in contravention of this Act or of any rules made under this Act, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted under this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

[1] For instances of such authorization, *see* Burma Rules Manual, Ed. 1897, p. 167, and the Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 222.

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Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 7.

16. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not labelled as prescribed by section 7 shall be punished with fine which may extend to five hundred rupees.

Penalty for refusing to comply with section 12.

17. Any dealer in petroleum who refuses or neglects to show to any officer authorised under section 12 any place or any of the vessels in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of the petroleum on payment of the value of the samples, shall be punished with fine which may extend to two hundred rupees.

Confiscation of petroleum.

18. In any case in which an offence under section 15 or section 16 has been committed, the convicting Magistrate may direct that—

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting, or is in possession of, any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing or transporting or is in possession of, shall, together with the tins or other vessels in which it is contained, be confiscated.

Jurisdiction.

19. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class, or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Test-apparatus.

Model test-apparatus.

20. A model of the apparatus for testing petroleum under this Act, constructed in accordance with the description contained in the schedule to this Act, shall be deposited in the office of the Chemical Examiner to Government, Calcutta, and be marked with the words "Model test-apparatus."

Verification of test-apparatus.

21. (*1*) The Chemical Examiner shall, on payment of such fee (if any) as the Governor General in Council may, from time to time, by notification in the Gazette of India, prescribe,[1] compare with the said model test-apparatus and verify every apparatus for testing petroleum which is submitted to him for the purpose.

(*2*) If any apparatus for testing petroleum, when compared and verified as provided by sub-section (*1*), is found correct or correct subject to certain

[1] For notification prescribing rates of fees, *see* Gazette of India, 1890, Pt. I, p. 734.

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corrections to be applied to the results of the tests, the Chemical Examiner shall stamp the same with a special number, and with the date of the verification, and shall further give a certificate in writing under his hand, in a form to be prescribed by the Governor General in Council,[1] to the effect that on the date aforesaid the apparatus was compared and verified by him and found to be correct, or correct subject to certain specified corrections to be applied to the results of the tests.

(*3*) A certificate granted under this section shall, until the contrary is proved, be conclusive proof of the matters stated therein.

(*4*) The Chemical Examiner shall keep a register, in a form [2] to be prescribed by the Governor General in Council, of the certificates granted under this section.

(*5*) Subject to the payment of such fees [3] as the Governor General in Council may, by notification in the Gazette of India, prescribe in this behalf, the said model test-apparatus shall be at all reasonable times open to inspection by any person desiring to inspect it.

Miscellaneous.

Power to Local Government to exempt petroleum from operation of this Act.

22. The Local Government may, from time to time, by notification in the official Gazette,[4] exempt from the operation of all or any of the provisions of this Act, or of all or any of the rules made under this Act, any petroleum which has its flashing point at or above one hundred and twenty degrees of Fahrenheit's thermometer and is imported as ordinary cargo and in quantity not exceeding that specified in the notification.

Power to apply this Act to other fluids.

23. The Governor General in Council may, from time to time, by notification in the Gazette of India, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by the notification fix, in substitution for the quantities of petroleum fixed by sections 5, 6 and 10, the quantities of the fluid to which those sections shall apply.

Power to limit operation of enactments relating to municipalities.

24. The Governor General in Council may, from time to time, by notification in the Gazette of India and in the local official Gazette, limit, in any manner he deems fit, the operation of any enactment for the time being in force relating to municipalities in any local area or to any particular municipality, and the exercise of any power conferred by any such enactment in so far as the enactment relates to the possession or transport of petroleum.

[1] For notification prescribing a form of certificate as required by this section, *see* Gazette of India, 1890, Pt. I, p. 595.

[2] For notification prescribing form of register, *see* Gazette of India, 1890, Pt. I, p. 596.

[3] For notification prescribing such a fee, *see* Gazette of India, 1890, Pt. I, p. 734.

[4] For instance of an exemption under this section, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 223.

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Power to revoke or vary notifications.

25. A notification made under this Act may be revoked or varied by the authority making it by a notification published in the same manner as the notification so revoked or varied.

Procedure for making and publication of rules.

26. (*1*) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.[1]

(*3*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*4*) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) A rule made under this Act shall not take effect if it is made by the Governor General in Council until it has been published in the Gazette of India, and if it is made by the Local Government until it has been published in the local official Gazette.

(*6*) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(*7*) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

THE SCHEDULE.

I.—Nature of the Test-apparatus.

The apparatus consists of the following parts :—

(1) the oil-cup ;

(2) the cover, with slide, test-lamp, and clock-work arrangement for opening and closing the holes in the cover and for dipping the test-flame ;

(3) the water-bath or heating vessel ;

(4) the tripod stand, with jacket and spirit-lamp for heating the water-bath ;

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[1] For notification prescribing mode of publishing draft rules, *see* Gazette of India, 1887, Pt. I, p. 448 ; and for notification prescribing mode of publishing draft rules for Upper Burma, *see* Burma Rules Manual, Ed. 1897, p. 176.

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(5) the thermometer for indicating the temperature of the oil in the oil-cup;

(6) the thermometer for indicating the temperature of the water in the water-bath;

(7) the thermometer for indicating the temperature of the oil before it is poured into the oil-cup;

(8) the dropping bottle or *pipette* for replenishing the test-lamp; and

(9) a barometer standardised at the Meteorological Office of the province or at any other place appointed by the Local Government.

The oil-cup is a cylindrical flat-bottomed vessel, made of gun-metal or brass, and tinned or silvered inside. A gauge is fixed to the inside of the cup to regulate the height to which it is to be filled with the sample under examination.

The cup is provided with a close-fitting overlapping cover, which carries the thermometer, the test-lamp and the adjuncts thereto. The test-lamp is suspended upon two supports by means of trunnions, which allow it to be easily inclined to a particular angle and restored to its original position. The socket in the cover, which is to hold a round bulb thermometer for indicating the temperature of the oil during the testing operation, is so adjusted that the bulb of the latter is always inserted in a definite position below the surface of the liquid.

The cover is provided with three holes, one in the centre and two smaller ones close to the sides. These are closed and opened by means of a pivoted slide. When the slide is moved so as to uncover the holes, the suspended lamp is caught by a projection fixed on the side, and tilted in such a way as to bring the end of the spout just below the surface of the lid. As the slide moves back so as to cover the holes, the lamp returns to its original position. Upon the cover, in front of and in a line with the nozzle of the lamp, is fixed a white bead, the diameter of which represents the size of the test-flame to be used.

The water-bath or heating vessel is so constructed that, when the oil-cup is placed in position in it, an air-space or air-chamber intervenes between the two; consequently, in applying the test under ordinary circumstances, the heat is transmitted gradually to the oil from the hot water through the air-space. The water-bath is fitted with a socket for receiving a long bulb thermometer, to indicate the temperature of the water. It is also provided with a funnel, an overflow-pipe and two handles.

The water-bath rests upon a tripod stand, which is fitted with a copper cylinder or jacket, so that the bath is surrounded by an enclosed air-space,

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which retains and regulates the heat. One of the legs of the stand serves as a support for a spirit-lamp, which is attached to it by a small swing bracket.

The clockwork arrangement, by which during the operation of testing the slide is withdrawn, and the test-flame dipped into the cup and raised again as the slide is replaced, is provided with a ratchet key for setting it in action for each test, and with a trigger for starting it each time that the test-flame is applied.

II.—Directions for drawing the Sample and preparing it for testing.

1. Drawing the sample.—In all cases the testing officer or some person duly authorised by him shall personally superintend the drawing of the sample from an original unopened tin or other vessel.

An opening sufficiently large to admit of the oil being rapidly poured or cyphoned from the tin or other vessel shall be made.

Two bottles, each of the capacity of about forty fluid ounces, are to be filled with the oil. One of these, the contents of which is intended to be preserved for reference in case of need, is to be carefully corked, the cork being well driven home, cut off level with the neck, and melted sealing-wax worked into it. The other bottle may be either stoppered or corked.

2. Preparing the sample for testing.—About ten fluid ounces of the oil, sufficient for three tests, are transferred from the bottle into which the sample has been drawn to a pint flask or bottle, which is to be immersed in water artificially cooled until a thermometer, introduced into the oil, indicates a temperature not exceeding 50° Fahrenheit.

III.—Directions for preparing and using the Test-apparatus.

1. Preparing the water-bath.—The water-bath is filled by pouring water into the funnel until it begins to flow out at the overflow-pipe. The temperature of the water at the commencement of each test, as indicated by the long bulb thermometer, is to be 130° Fahrenheit, and this is attained in the first instance by mixing hot and cold water, either in the bath or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or the water is heated by means of the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

2. Preparing the test-lamp.—The test-lamp is fitted with a piece of cylindrical wick of such thickness that it fills the wick-holder, but may readily be moved to and fro for the purpose of adjusting the size of the flame. In the body of the lamp, upon the wick, which is coiled within it, is placed a small

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tuft of cotton wool, moistened with petroleum, any oil not absorbed by the wool being removed. When the lamp has been lighted, the wick is adjusted by means of a pair of forceps until the flame is of the size of the bead fixed on the cover of the oil-cup; should a particular test occupy so long a time that the flame begins to get smaller, through the supply of oil in the lamp becoming exhausted, three or four drops of petroleum are allowed to fall upon the tuft of wool in the lamp from the dropping bottle or *pipette* provided for that purpose. This can be safely done without interrupting the test.

3. *Filling the oil-cup.*—The oil-cup having been previously cooled, by placing it bottom downwards in water at a temperature not exceeding 50° Fahrenheit, is to be rapidly wiped dry, placed on a level surface in a good light, and the oil to be tested is poured in very slowly, without splashing, until its surface is level with the point of the gauge which is fixed in the cup. The round bulb thermometer is inserted into the lid of the cup, care being taken that the projecting rim of the collar touches the edge of the socket; the test-lamp, prepared as already described, is placed in position, and the cover is then put on to the cup and pressed down so that its edge rests on the rim of the cup.

4. *Application of the test.*—The water-bath, with its thermometer in position, is placed in some locality where it is not exposed to currents of air, and where the light is sufficiently subdued to admit of the size of the entire test-flame being compared with that of the bead on the cover. The cup is carefully lifted without shaking it, and placed in the bath, the test-lamp is lighted, and the clockwork wound up by turning the key. The thermometer in the oil-cup is now watched, and, when the temperature has reached 56° Fahrenheit, the clockwork is set in motion by pressing the trigger.

If no flash takes place, the clockwork is at once re-wound and the trigger pressed at 57° Fahrenheit, and so on, at every degree rise of temperature, until the flash occurs, or until a temperature of 95° Fahrenheit has been reached.

[1] If the flash takes place at any temperature below 77° Fahrenheit, the temperature at which it occurs is to be recorded. Two fresh portions of the sample are then to be successively tested in a similar manner and the results recorded. If no greater difference than 2° Fahrenheit exists between any two of the three recorded results, and if in no instance the flash has taken

[1] This clause was substituted for the original clause by the Petroleum Act (1886) Amendment Act, 1890 (XIV of 1890), printed, *infra*, p. 469.

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place within eight degrees of the temperature at which the testing is commenced, each result is to be corrected for atmospheric pressure as hereafter described, and the average of the three corrected results is the flashing point of the sample. In the event of there being a greater difference than 2° Fahrenheit between any two of the results, while in no instance has the flash taken place within eight degrees of the temperature at which the testing was commenced, the series or tests is to be rejected, and a fresh series of three similarly obtained, and so on, until a sufficiently concordant series is furnished, when the results are to be corrected and the average taken in the manner already described.

[1] If, however, a flash has occurred at or below 64° when the test is applied in the manner above described, the next testing shall be commenced ten degrees lower than the temperature at which the flash had been previously obtained (that is to say, at 54° or thereunder), and this procedure shall be continued until the results of three consecutive tests do not show a greater difference than 2°, and until a flash has not occurred in any of the three tests within eight degrees of temperature at which the testing is commenced: Provided always that, if at the commencement of the series of tests a flash has occurred on the first application of the test-flame at 56°, and if a flash has also occurred on the first application of the flame in each of three successive tests in which, thereupon, the test-flame is first applied at 46° as above directed, the testing officer shall certify that the petroleum has a flashing point below 47°, and the sample shall be reported dangerous.

If a temperature of 76° Fahrenheit has been reached without a flash occurring, the application of the test-flame is to be continued at every degree rise of temperature until a temperature of 95° Fahrenheit has been reached. If no flash has occurred up to this point, and if the petroleum is declared to be imported subject to the provisions of the Act, the tests shall not be continued, and the testing officer shall certify that the petroleum has a flashing point over 95° and is not dangerous. But, if the petroleum is oil ordinarily used for lubricating purposes and is declared to have its flashing point at or above 200° or is oil to which a notification of the Local Government exempting it from the operation of the Act will be applicable in the event of the flashing point being found to be at or above 120°, the test shall be continued as follows:—The oil-cup is to be removed from the water-bath, and the temperature of the water in the water-bath is to be reduced to 95° Fahrenheit

[1] This clause was substituted for the original clause by the Petroleum Act (1886) Amendment Act, 1890 (XIV of 1890), printed, *infra*, p. 469.

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by pouring cold water into the funnel (the hot water escaping by the overflow-pipe). The air-chamber is then to be filled to a depth of 1½ inches with water at a temperature of about 95° Fahrenheit, the oil-cup is to be replaced in the water-bath and the spirit-lamp attached to the water-bath is to be lighted and placed underneath. The test-flame is then to be again applied, from 96° Fahrenheit, at every degree rise of temperature as indicated by the thermometer in the oil-cup, until a flash takes place or until a temperature of 200° Fahrenheit or 120° Fahrenheit, as the case may be, has been reached. If during this operation the test-flame appears to diminish in size, the lamp is to be replenished in the manner prescribed at (2) without interrupting the test.

If a flash occurs at any temperature between 76° and 200° Fahrenheit, the temperature at which it occurs, subject to correction for atmospheric pressure, is the flashing point of the sample.

In repeating a test a fresh sample of oil must always be used, the tested sample being thrown away, and the cup must be wiped dry from any adhering oil and cooled, as already described, before receiving the fresh sample.

5. *Correction for atmospheric pressure.*—As the flashing point of an oil is influenced by changes in atmospheric pressure to an average extent of 1·6° Fahrenheit for every inch of the barometer, a correction of the observed flashing point may become necessary. The height of the barometer must therefore be determined at the time of making the test for the flashing point. The true height of the barometer for the purpose of the test shall be considered to be the height of the column of mercury measured at 32° Fahrenheit which is supported by the air pressure at the time of the experiment; that is, the actual height of the barometer at the time of observation duly corrected for any error of the instrument and for its temperature, if necessary. For the purpose of applying the correction to the flashing point of the oil obtained by the test, a table is appended to this schedule giving the flashing points of oils ranging from 65° to 80° Fahrenheit, under pressure ranging from 27 to 31 inches of mercury.

The table is used in the following manner :—

Example.—An oil has given a flashing point of 71°, the barometer being at 28·6 inches; take the nearest number to 71°, in the vertical column headed 28·6. This number is 70·8. Substitute for this the number in the same horizontal line in the column headed 30 (the normal of the barometer). The substituted number, that is, the true flashing point of the oil, is 73°.

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Petroleum.
(The Schedule.)

Table for correction of Flashing Points indicated by the test for Variations in Barometric Pressure on either side of Thirty Inches.

Barometer in Inches.

27	27·2	27·4	27·6	27·8	28	28·2	28·4	28·6	28·8	29	29·2	29·4	29·6	29·8	30	30·2	30·4	30·6	30·8	31
Flashing Point in Degrees Fahrenheit.																				
60·2	60·5	60·8	61·2	61·5	61·8	62·1	62·4	62·8	63·1	63·4	63·7	64	64·4	64·7	65	65·3	65·6	66	66·3	66·6
61·2	61·5	61·8	62·2	62·5	62·8	63·1	63·4	63·8	64·1	64·4	64·7	65	65·4	65·7	66	66·3	66·6	67	67·3	67·6
62·2	62·5	62·8	63·2	63·5	63·8	64·1	64·4	64·8	65·1	65·4	65·7	66	66·4	66·7	67	67·3	67·6	68	68·3	68·6
63·2	63·5	63·8	64·2	64·5	64·8	65·1	65·4	65·8	66·1	66·4	66·7	67	67·4	67·7	68	68·3	68·6	69	69·3	69·6
64·2	64·5	64·8	65·2	65·5	65·8	66·1	66·4	66·8	67·1	67·4	67·7	68	68·4	68·7	69	69·3	69·6	70	70·3	70·6
65·2	65·5	65·8	66·2	66·5	66·8	67·1	67·4	67·8	68·1	68·4	68·7	69	69·4	69·7	70	70·3	70·6	71	71·3	71·6
66·2	66·5	66·8	67·2	67·5	67·8	68·1	68·4	68·8	69·1	69·4	69·7	70	70·4	70·7	71	71·3	71·6	72	72·3	72·6
67·2	67·5	67·8	68·2	68·5	68·8	69·1	69·4	69·8	70·1	70·4	70·7	71	71·4	71·7	72	72·3	72·6	73	73·3	73·6
68·2	68·5	68·8	69·2	69·5	69·8	70·1	70·4	70·8	71·1	71·4	71·7	72	72·4	72·7	73	73·3	73·6	74	74·3	74·6
69·2	69·5	69·8	70·2	70·5	70·8	71·1	71·4	71·8	72·1	72·4	72·7	73	73·4	73·7	74	74·3	74·6	75	75·3	75·6
70·2	70·5	70·8	71·2	71·5	71·8	72·1	72·4	72·8	73·1	73·4	73·7	74	74·4	74·7	75	75·3	75·6	76	76·3	76·6
71·2	71·5	71·8	72·2	72·5	72·8	73·1	73·4	73·8	74·1	74·4	74·7	75	75·4	75·7	76	76·3	76·6	77	77·3	77·6
72·2	72·5	72·8	73·2	73·5	73·8	74·1	74·4	74·8	75·1	75·4	75·7	76	76·4	76·7	77	77·3	77·6	78	78·3	78·6
73·2	73·5	73·8	74·2	74·5	74·8	75·1	75·4	75·8	76·1	76·4	76·7	77	77·4	77·7	78	78·3	78·6	79	79·3	79·6
74·2	74·5	74·8	75·2	75·5	75·8	76·1	76·4	76·8	77·1	77·4	77·7	78	78·4	78·7	79	79·3	79·6	80	80·3	80·6
75·2	75·5	75·8	76·2	76·5	76·8	77·1	77·4	77·8	78·1	78·4	78·7	79	79·4	79·7	80	80·3	80·6	81	81·3	81·6

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THE INDIAN SECURITIES ACT, 1886.

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ACT No. XIII OF 1886.[1]

[*19th March, 1886.*]

An Act to consolidate and amend the law relating to Government Securities.

WHEREAS it is expedient to consolidate and amend the law relating to Government securities; It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Indian Securities Act, 1886; and

(*2*) It shall come into force on the first day of April, 1886. * * * *[2]

Repeal.

III of 1881. XIX of 1885.

2. (*1*) On and from the day on which this Act comes into force, the Indian Securities Act, 1881, and the Indian Securities Act, 1885, shall be repealed.

(*2*) But any authority conferred, notification issued, list published or rule

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 49; for Report of the Select Committee, *see ibid*, Pt. IV, p. 191; and for Proceedings in Council, *see ibid*, Supplement, pp. 225, 233 and 669.

This Act has been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 (*1*). *See* now s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898) by which ct XX of 1886 has been repealed.

[2] Sub-sec. (*3*) which was as follows :—"The power conferred on the Governor General in Council by section 7, sub-section (*1*), may be exercised at any time after the passing of this Act; but a notification issued in exercise of that power shall not take effect until the Act comes into force," was repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI, Ed. 1898.

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or order made under either of those Acts shall, so far as may be, be deemed to have been conferred, issued, published or made under this Act.

Definitions.

3. In this Act—

(1) "Government security" includes promissory notes, debentures, stock certificates and all other securities issued by the Government of India or by any Local Government in respect of any loan contracted either before or after the passing of this Act, but does not include a stock-note or a currency-note: and

(2) "prescribed" means prescribed by rules made by the Governor General in Council.

Notice of trust not receivable.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Right of survivors of joint payees of Government securities.

5. (1) Notwithstanding anything in the Indian Contract Act, 1872,[1] section 45, when a Government security is payable to two or more persons jointly and either or any of them dies, the security shall be payable to the survivor or survivors of those persons. IX of 1872.

(2) Nothing herein contained shall affect any claim which the representative of the deceased person may have against the survivor or survivors in respect of the security jointly payable to him or them and the deceased.

(3) This section shall apply whether the death of the person to whom the security was jointly payable occurred or occurs before or after this Act comes into force.

Prohibition of indorsements on allonges to Government securities.

6. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881,[2] the holder of the Government security shall not be said to indorse the security, or be called the indorser thereof, if, when he signs the same for the purpose of negotiation, he inscribes his signature for that purpose elsewhere than on the back of the security itself. XXVI of 1881.

Holding of Government securities by

7. (1) In the case of any public office to which the Governor General in Council may, from time to time,[3] by notification in the Gazette of India,

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 315.
[2] Printed, General Acts, Vol. III, Ed. 1898, p. 399.
[3] The section has been declared applicable to the offices of—

(1) Managers of State Railways, *see*	Gazette of India,	1886, Pt. I, p. 345.
(2) Commanding Officers of Regiments	Ditto,	1886, Pt. I, p. 382.
(3) Chairman, Town Council, Bombay, and Municipal Commissioner, Bombay .	Ditto,	1886, Pt. I, p. 422.
(4) Chairman, Harbour Trust Board, Madras . .	Ditto,	1887, Pt. I, p. 186.
(5) Registrar of any Presidency Small Cause Court . .	Ditto,	1889, Pt. I, p. 346.
(6) Assistant Commissioners of Salt and Abkari Revenue, Madras	Ditto,	1890, Pt. I, p. 613.
(7) Consulting Architect to Government, Madras . .	Ditto,	1891, Pt. I, p. 465.

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declare this sub-section to apply, a Government security may be made or indorsed payable to or to the order of the holder for the time being of the office by the name of the office.

holders for the time being of public offices.

(2) When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each holder for the time being of the office to the succeeding holder for the time being of the office on and from the date on which the latter takes charge of the office.

(3) When the holder for the time being of the office indorses to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement with his name and the name of the office.

(4) A writing on a Government security now or heretofore standing in the name of the holder of a public office, whereby the security has been or was made or indorsed payable to or to the order of the holder of the office for the time being shall not be deemed to be or to have been invalid by reason only of the payee or indorsee being the holder for the time being of a public office by the name of the office.

(5) This section applies as well to an office of which there are two or more joint holders as to an office of which there is a single holder.

Tr nsfer and discharge of certificates and c upons.

8. (1) Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of the loan, the title to the certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer.

(2) On payment, by or on behalf of the Government, to the bearer of the certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if the certificate or coupon were a promissory note payable to bearer.

Indorser of Government security not liable for amount thereof.

9. A person shall not, by reason only of his having indorsed a Government security, be liable to pay any money due, either as principal or as interest, thereunder.

Impression of signature on Government securities

10. (1) The signature of the officer of the Government of India authorized to sign Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on the securities.

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the officer.

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Issue of renewed securities.

11. A person claiming to be entitled to a Government security as payable to him under an indorsement may, on satisfying the prescribed officer of the justice of his claim and paying the prescribed fee and delivering the security duly receipted to the prescribed officer, obtain from the officer a renewed security issued payable to himself.

Issue of duplicate securities

12. (*1*) When a Government security is alleged to have been wholly or partly lost or destroyed, and a person claims to be the person to whom but for the loss or destruction it would be payable, he may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss or destruction and of the justice of the claim, obtain from him an order for—

(*a*) the payment of interest in respect of the security said to be lost or destroyed pending the issue of a duplicate security; and

(*b*) the issue of a duplicate security payable to the applicant.

(*2*) An order shall not be passed under sub-section (*1*) until after the issue of the prescribed notification of the loss or destruction and after the expiration of the prescribed period, nor until the applicant has given the prescribed indemnity against the claims of all persons deriving title under the security lost or destroyed.

(*3*) A list of the securities in respect of which an order is passed under sub-section (*1*) shall be published in the Gazette of India at such times as the Governor General in Council may, from time to time, direct.

Period after which the Government is released from liability in respect of original security.

13. When a renewed security has been issued under section 11, or a duplicate security has been issued under section 12, the Government shall be discharged from all liability in respect of the original security of which the renewed or duplicate security has been issued—

(*a*) in the case of a renewed security, after the lapse of six years from the date of the issue of the renewed security;

(*b*) in the case of a duplicate security, after the lapse of six years from the date of the publication under section 12, sub-section (*3*), of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is the later.

Power of Governor General in Council to make rules.

14. The Governor General in Council may, from time to time, make rules [1] to prescribe—

(*a*) the mode in which payment of interest in respect of Government securities is to be recorded and acknowledged;

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[1] For rules made under this section, *see* Gazette of India, 1888, Pt. I, p. 6, and *ibid*, 1896, Pt. I, p. 628.

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(*b*) the circumstances in which Government securities must be renewed before further payment of interest thereon can be claimed;

(*c*) the fees to be paid in respect of applications under sections 11 and 12;

(*d*) the form in which securities delivered for renewal are to be receipted;

(*e*) the officer who is to exercise all or any of the powers and perform all or any of the duties prescribed by sections 11 and 12;

(*f*) the proof which is to be produced by persons applying for duplicate securities;

(*g*) the form and mode of publication of the notification mentioned in section 12, and the period after which interest may be paid or a duplicate security may be issued under that section;

(*h*) the nature and amount of the indemnity to be given by a person applying under section 12 for the payment of interest or the issue of a duplicate security; and,

(*i*) generally, all matters connected with the grant of renewed and duplicate securities.

Publication of drafts and rules.

15. (*1*) The Governor General in Council shall, before making rules under section 14, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of the public.

(*2*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under section 14 shall be published in the Gazette of India, and the publication in that Gazette of a rule purporting to be made under that section shall be conclusive proof that it has been duly made.

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ACT No. XVIII OF 1886.[1]

[*24th September, 1886.*]

An Act to amend Act XXXVI of 1858.

WHEREAS it is expedient to amend Act XXXVI of 1858 (*an Act relating to Lunatic Asylums*); It is hereby enacted as follows :—

New section inserted after section 6. Detention of supposed lunatics under observation.

1. After section 6 the following shall be inserted, namely :—

"**6A.** (*1*) Where a person found wandering at large who is deemed to be a lunatic, or where a person believed to be dangerous by reason of lunacy, is apprehended and sent to the Magistrate or the Commissioner of Police, or where, on report or information that a person deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected, the Magistrate or the Commissioner of Police sends for him and then determines to proceed as prescribed in section 4 of this Act, the Magistrate or the Commissioner of Police, on the request of the medical officer, may, by order in writing, authorize the detention of the supposed lunatic for such time, not exceeding ten days, as, in the opinion of the Magistrate or the Commissioner of Police, may be necessary to enable the medical officer to form an opinion on the question whether or not the supposed lunatic is a person with respect to whom a certificate in the form A in the schedule to this Act ought to be signed.

"(*2*) If the medical officer certifies further detention than has been authorized under sub-section (*1*) to be necessary to enable him to form his opinion on that question, the Magistrate or the Commissioner of Police may from time to time, by order in writing, authorize such further detention as he deems to be necessary :

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[1] Short title, "The Indian Lunatic Asylums Act (1858) Amendment Act, 1886," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1885, Pt. V, p. 357; for Report of the Select Committee, *see ibid*, 1886, Pt. IV, p. 280; for Proceedings in Council, *see ibid*, 1886, Supplement, pp. 7 and 1335.

The Act is in force in Upper Burma (except the Shan States) as being part of the original Act, XXXVI of 1858, declared in force there by the Burma Laws Act, 1898 (XIII of 1898), *see* s. 4 and the First Schedule.

The Act had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874, *see* Burma Gazette, 1888, Pt. I, p. 362, and Gazette of India, 1888, Pt. I, p. 371.

It has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597, *see* Calcutta Gazette, 1895, Pt. I, p. 510.

As being part of Act XXXVI of 1858, it has been declared in force in the Angul District by the Angul District Regulation, 1894 (I of 1894), s. 3; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69, and as being part of that Act it has been declared in force, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), in the Gáro Hills, the Khási and Jaintiá Hills, the Nágá Hills, the North Cachar Hills in the Cachar District and the Eastern Dwárs in the Goálpára District, *see* Gazette of India, 1897, Pt. I, p. 299; in the Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 869, and it has been similarly extended, by notification under s. 5, to the Scheduled District of Coorg, *see* Gazette of India, 1887, Pt. I, p. 144.

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"Provided that a supposed lunatic shall not be detained for the purpose of this section for a longer time than fourteen days from the date on which the first order authorizing his detention for that purpose is made.

"(*3*) The Executive Government may from time to time make rules as to the place of detention, and the care and treatment, of supposed lunatics detained under this section."

2. To section 9 the words "subject to the provisions of any enactment for the time being in force" shall be prefixed. Amendment of section 9.

3. After section 17 the following shall be inserted, namely * * *[1] :— New sections to follow section 17.

"17B. The Governor General in Council may from time to time, by order, direct, with respect to any part of British India which is not annexed to a presidency or, being annexed to the presidency of Fort William, Fort St. George or Bombay, is situated at a greater distance than three hundred miles from Calcutta, Madras or Bombay, respectively, that any lunatic asylum in British India named in the order shall be deemed for that part to be a lunatic asylum at the presidency for the purposes of this Act." Use of provincial asylums as presidency asylums for purposes of the Act.

ACT No. II OF 1887.[2]

[*14th January, 1887.*]

An Act to amend the Sea Customs Act, 1878, * * * *.[3]

VIII of 1878. WHEREAS it is expedient to amend the Sea Customs Act, 1878, * * *;[3] It is hereby enacted as follows :—

Sea Customs Act, 1878.[4]

1. (*1*) In clause (*b*) of the second paragraph of section 144 of the Sea Customs Act, 1878,[4] there shall be inserted after the word "unless" the word "either" and after the word "destination" the following, namely :— Amendment of section 144.

VIII of 1878.

"or the delivery of the spirit into a warehouse appointed in this behalf by the Local Government having authority at that port."

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[1] That part of s. 3 which related to the addition of s. 17A was repealed by the Repealing and Amending Act, 1891 (XII of 1891), a revised section having been enacted by s. 1 of the Indian Lunatic Asylums Act (1858) Amendment Act, 1889 (XX of 1889), printed, *infra*, p. 356.

[2] Short title, "The Sea Customs Act (1878) Amendment Act, 1887," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1887, Extraordinary, dated 10th January, 1887, p. 1; for Proceedings in Council, *see ibid*, Pt. VI, pp. 4 and 10.

This Act, so far as it amends the Sea Customs Act, 1878 (VIII of 1878), is in force in Upper Burma (except the Shan States) as being part of the original Act declared in force there by the Burma Laws Act, 1898 (XIII of 1898), *see* s. 4 and the First Schedule.

[3] The words "The Excise Act, 1881, and the Indian Tariff Act, 1882," in the title and preamble have been omitted, as so much of this Act as relates to the Excise Act, 1881, was repealed by the Excise Act, 1896 (XII of 1896); and the Tariff Act, 1882 (XI of 1882), was repealed by the Tariff Act, 1894 (VIII of 1894).

[4] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

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(*2*) In the third paragraph of the same section of the same Act the following shall be substituted for the word " paid ", namely :—

" so paid or the spirit so delivered."

Amendment of section 146.

2. In section 146 of the same Act, for the word " shall ", in each of the two places where that word occurs, the word " may " shall be substituted.

Amendment of section 148.

3. (*1*) To section 148 of the same Act the following words shall be prefixed, namely :—

" Notwithstanding anything in the Indian Tariff Act, 1882,[1]". XI of 1882.

(*2*) To the same section of the same Act the following shall be added, namely :—

" Provided that the Local Government may authorize the import of such spirit without the payment of that duty at the port of importation when the spirit is to be deliverd into a warehouse appointed by the Local Government in this behalf, and the excise-duty thereon is to be paid on the removal of the spirit from a warehouse so appointed.

Amendment of section 151.

4. (*1*) To section 151 of the same Act the following words shall be prefixed, namely :—

" Notwithstanding anything in the Indian Tariff Act, 1882,[1]". XI of 1882.

(*2*) After the same section of the same Act the following shall be added, namely :—

" Provided that the Local Government may authorize the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed."

5 & 6. [*Amending Excise Act, 1881.*] *Rep. by the Excise Act, 1896* (*XII of 1896*).

7. [*Repeal of portion of preamble, Act XI of 1882.*] *Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).

8. [*Addition to s. 7, Act XI of 1882.*] *Rep. by the Tariff Act, 1894* (*VIII of 1894*).

9. [*Amendment of second schedule, Act XI of 1882.*] *Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).

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[1] *See* now the Tariff Act, 1894 (VIII of 1894), printed, General Acts, Vol. VI.

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ACT No. III OF 1887.[1]

[*14th January, 1887.*]

An Act to amend the Indian Evidence Act, 1872.

WHEREAS it is expedient that Revenue-officers should not be compelled to say whence they obtain information with respect to offences against the public revenue; It is hereby enacted as follows :—

1. The following section shall be substituted for section 125 of the Indian Evidence Act, 1872,[2] namely :— I of 1872.

New section substituted for section 125 of the Evidence Act. Information as to commission of offences.

"125. No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—'Revenue-officer' in this section means any officer employed in or about the business of any branch of the public revenue."

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[1] Short title, "The Indian Evidence Act (1872) Amendment Act, 1887," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 793; for Report of the Select Committee, *see ibid*, 1887, Pt. IV, p. 7; and for Proceedings in Council, *see ibid*, 1886, Supplement, pp. 1132 and 1155, and *ibid*, 1887, Pt. VI, p. 11.

This Act is in force in Upper Burma (except the Shan States) as being part of the original Act, I of 1872, declared in force there by the Burma Laws Act, 1898 (XIII of 1898).

Act III of 1887 had been previously extended there under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Burma Gazette, 1888, Pt. I, p. 362, and Gazette of India, Pt. I, p. 371.

It has been declared in force in the Santhál Parganas, under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597, *see* Calcutta Gazette, 1895, Pt. I, p. 310.

As being part of Act I of 1872, it was declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69; in the Angul District by the Angul District Regulation, 1894 (I of 1894); in the Kachin Hill-tracts, as regards Hill-tribes, by the Kachin Hill District Regulation, 1895 (I of 1895); and in the Chin Hills as regards Hill-tribes, by the Chin Hills Regulation, 1896 (V of 1896).

[2] Printed, General Acts, Vol. II, p. 232.

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ACT No. VI OF 1887.[1]

[*11th February, 1887.*]

An Act to amend the Indian Companies Act, 1882.[2]

WHEREAS it is expedient to amend the Indian Companies Act, 1882,[2] in manner hereinafter appearing; It is hereby enacted as follows:— VI of 1882

Insertion of new section after section 200. Priority of debts.

1. After section 200 of the Indian Companies Act, 1882,[2] the following section shall be inserted, namely:— VI of 1882.

"200A. (*1*) In the distribution of the assets of any company being wound up under this Act, there shall be paid in priority to all other debts—

"(*a*) all revenue, taxes, cesses and rates, whether payable to Her Majesty or to a local authority, due from the company at the date of the commencement of the winding-up, and having become due and payable within the twelve months next before that date;

"(*b*) all wages or salary of any clerk or servant in respect of services rendered to the company within the two months next before the commencement of the winding-up, not exceeding one thousand rupees for each clerk or servant; and

"(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the company within the two months next before the commencement of the winding-up.

"(*2*) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions among themselves.

"(*3*) Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the liquidator or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the company

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[1] Short title, "The Indian Companies Act (1882) Amendment Act, 1887," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 695; for Report of the Select Committee, *see ibid*, 1887, Pt. IV, p. 14; for Proceedings in Council, *see ibid*, 1886, Supplement, pp. 1010 and 1020, and *ibid*, 1887, Pt. VI, p. 19.

This Act is in force in Upper Burma (except the Shan States) as being part of the original Act, VI of 1882, declared in force there by s. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898).

Act VI of 1887 had been previously extended there, under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Burma Gazette, 1888, Pt. I, p. 362, and Gazette of India, 1888, Pt. I, p. 371.

As being part of Act VI of 1882, it has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), to British Baluchistan, *see* Gazette of India, 1895, Pt. II, p. 9.

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 100.

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are and will be sufficient to meet them, as and when the assets come into the hands of the liquidator or official liquidator."

ACT No. VII OF 1887.[1]

[*11th February, 1887.*]

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto; It is hereby enacted as follows :—

1. This Act may be called the Suits Valuation Act, 1887. Title.

PART I.

SUITS RELATING TO LAND.

2. This Part shall extend to such local areas, and come into force therein on such dates, as the Governor General in Council, by notification in the Gazette of India, directs.[2] Extent and commencement of Part I.

3. (*1*) The Local Government may, with the previous sanction of the Governor General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870,[3] section 7, paragraphs v and vi, and paragraph x, clause (*d*). Power for Local Government to make rules determining value of land for jurisdictional purposes.

VII of 1870.

(*2*) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

4. Where a suit mentioned in the Court-fees Act, 1870,[3] section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, Valuation of relief in certain suits relating to land not to

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 791; for Report of the Select Committee, *see ibid*, 1887, Pt. IV, p. 18; and for Proceedings in Council, *see ibid*, 1886, Supplement, pp. 1131 and 1155, and *ibid*, 1887, Pt. VI, pp. 16 and 21.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), *see* s. 4 and the First Schedule.

It had peviously been extended there, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p 477, *see* Burma Gazette, 1888, Pt. I, p. 362, and Gazette of India, 1888, Pt. I, p. 371.

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69.

[2] Part I of the Act has, under s. 2, been declared to extend to the Punjab, and to come into force therein on the 1st day of March, 1889, *see* Gazette of India, 1889, Pt. I, p. 107.

[3] Printed, General Acts, Vol. II, Ed. 1898, p. 124.

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exceed the value of the land.

the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

Making and enforcement of rules.

5. (*1*) The Local Government shall, before making rules under section 3, consult the High Court with respect thereto.

(*2*) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette.

Repeal of section 14 of the Madras Civil Courts Act, 1873.

6. On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act, 1873,[1] extends, section 14 of that Act shall be repealed as regards that part of those territories. III of 1873.

PART II.

Other Suits.

Extent and commencement of Part II.

7. This Part extends to the whole of British India, and shall come into force on the first day of July, 1887.

Court-fee value and jurisdictional value to be the same in certain suits.

8. Where in suits other than those referred to in the Court-fees Act, 1870,[2] section 7, paragraphs v, vi and ix, and paragraph x, clause (*d*), court-fees are payable *ad valorem* under the Court-fees Act, 1870,[2] the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

Determination of value of certain suits by High Court.

9. When the subject-matter of suits of any class, other than suits mentioned in the Court-fees Act, 1870,[2] section 7, paragraphs v and vi, and paragraph x, clause (*d*), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court-fees Act, 1870,[2] and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.[3] VII of 1870.

10. [*Repeal of s. 32, Punjab Courts Act, 1884 (XVIII of 1884).*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

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[1] Printed, Madras Code, Ed. 1888, p. 160.
[2] Printed, General Acts, Vol. II, Ed. 1898, p. 124.
[3] For rules as to valuation of certain classes of suits under this section in—
(*1*) the Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 246;
(*2*) Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 122.

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PART III.

SUPPLEMENTAL PROVISIONS.[1]

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

XIV of 1882.

11. (*1*) Notwithstanding anything in section 578 of the Code of Civil Procedure,[1] an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless—

(*a*) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorand m of appeal to that Court, or

(*b*) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(*2*) If the objection was taken in the manner mentioned in clause (*a*) of sub-section (*1*), but the appellate Court is not satisfied as to both the matters mentioned in clause (*b*) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or lower appellate Court.

(*3*) If the objection was taken in that matter and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(*4*) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure[1] or other enactment for the time being in force.

XIV of 1882.

(*5*) This section extends to the whole of British India, and shall come into force on the first day of July, 1887.

Proceedings pending at commencement of Part I or Part II.

12. Nothing in Part I or Part II shall be construed to affect the jurisdiction of any Court—

(*a*) with respect to any suit instituted before rules under Part I

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or

(*b*) with respect to any appeal arising out of any such suit.

THE PROVINCIAL SMALL CAUSE COURTS ACT, 1887.

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ACT No. IX OF 1887.[1]

[*24th February, 1887.*]

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (*1*) This Act may be called the Provincial Small Causes Courts Act, 1887.

(*2*) It extends to the whole of British India ;[2] and

(*3*) It shall come into force on the first day of July, 1887.

2. (*1*) [*Repeal of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Construction.

(*2*) [3] All Courts constituted, limits fixed, places appointed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act No. XI of

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 8 ; for Report of the Select Committee, *see ibid*, 1887, Pt. IV, p. 33 ; and for Proceedings in Council, *see ibid*, 1886, Supplement, pp. 8 and 9, and *ibid*, 1887, Pt. VI, p. 25.

Act IX of 1887 was declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, printed, Baluchistan Code, Ed. 1890, p. 69.

It has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, to be in force in the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1887, Pt. I, p. 582. The District of Lohárdaga included at this time the District of Palamau, which was separated in 1894.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), *see* s. 4 and the First Schedule.

It had previously been extended, under s. 5 of Act XIV of 1874,—

(*a*) to the Town of Mandalay, *see* Gazette of India, 1888, Pt. I, p. 88 ; and

(*b*) to the whole of Upper Burma (except the Shan States), *see* Gazette of India, 1897, Pt. I, p. 999.

For power to confer upon a Subordinate Judge or Munsif in Bengal, the North-Western Provinces and Assam, the jurisdiction of a Court of Small Causes under this Act, *see* the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (XII of 1887), s. 25, printed, Assam Code, Ed. 1887, p. 189.

Ss. 15, 32, 37, 38, 39 and 40 of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (XII of 1887), apply to Courts of Small Causes constituted under this Act, *see* Act XII of 1887, s. 40, printed, Assam Code, Ed. 1897, p. 189.

[2] As to definition of "British India," *see* Interpretation Act (52 & 53 Vict., c. 63), s. 18, cl. 4, Gazette of India, 1889, Pt. I, p. 545, and the General Clauses Act, 1897 (X of 1897), s. 3 (7), printed, General Acts, Vol. VI.

[3] The word "But" was repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI.

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1865[1] (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), or under any enactment repealed by that Act, shall, so far as may be, be deemed to have been respectively constituted, fixed, appointed, made, conferred, prescribed, given and published under this Act.

(*3*) Any enactment or document referring to Act No. XI of 1865[1] or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. Nothing in this Act shall be construed to affect— Savings.

(*a*) any proceedings before or after decree in any suit instituted before the commencement of this Act; or

(*b*) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of village-munsifs or village-panchâyats under the provisions of the Madras Code, or of village-munsifs under the Dekkhan Agriculturists' Relief Act, 1879;[2] or

XVII of 1879.

(*c*) any local law or any special law other than the Code of Civil Procedure.[3]

XIV of 1882.

4. In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court. Definition.

CHAPTER II.

Constitution of Courts of Small Causes.

5. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.[4] Establishment of Courts of Small Causes.

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[1] Act XI of 1865 was repealed by s. 2 (*1*) of this Act.

[2] *See* the revised edition published by the Legislative Department as modified up to 1st December, 1895.

[3] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

[4] For notifications constituting Provincial Small Cause Courts in—

(*a*) Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 488;

(*b*) Burma, *see* Burma Rules Manual, Ed. 1897, p. 181; and Burma Gazette, 1898, Pt. I, p. 107;

(*c*) North-Western Provinces, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 123.

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(*2*) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place or places within those limits as the Local Government may appoint.[1]

Judge

6. (*1*) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.[2]

(*2*) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

Appointment of times of sitting in certain circumstances.

7. (*1*) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(*2*) Notice of the times shall be published in such manner as the High Court from time to time directs.

Additional Judge.

8. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes or of two or more such Courts.

(*2*) The Additional Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(*3*) The Judge may withdraw from the Additional Judge any business pending before him.

(*4*) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

Suspension and removal of Judges.

9. A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government.

Power to require two Judges to sit as a bench.

10. The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order.

Decision in case heard by a bench.

11. (*1*) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction

[1] For notifications issued under cl. (*2*) of s. 5 for Courts in—
(*a*) Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. 489 and 492;
(*b*) Burma, *see* Burma Rules Manual, Ed. 1897, p. 181;
(*c*) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, pp. 247 and 248;
(*d*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 122 and 123.

[2] For instance of a notification issued under this section, *see* Burma Rules Manual, Ed. 1897, p. 181.

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of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure [1] shall apply to the reference. XIV of 1882.

(*2*) If they differ on any matter other than a matter specified in sub-section (*1*), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(*3*) For the purposes of sub-section (*2*), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

Registrar.

12. (*1*) The Local Government may appoint to a Court of Small Causes an officer to be called the Registrar of the Court.[2]

(*2*) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(*3*) The Local Government may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(*4*) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(*5*) A Registrar may be suspended or removed from office by the Local Government.

Other ministerial officers.

13. Subject to any enactment for the time being in force and to any orders made by the Local Government in this behalf, the law or practice for the time being applicable to the appointment, punishment and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established shall, so far as it can be made applicable, apply to the appointment, punishment and transfer of ministerial officers of the Court of Small Causes other than the Registrar, if any, of that Court.

Duties of ministerial officers.

14. (*1*) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(*2*) The High Court may make rules consistent with this Act, and with

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[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

[2] For instance of a notification issued under this section, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 498.

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any other enactment for the time being in force, conferring and imposing on the ministerial officers[1] of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

Cognizance of suits by Courts of Small Causes.

15. (*1*) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(*2*) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(*3*) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.[2]

Exclusive jurisdiction of Courts of Small Causes.

16. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER IV.

PRACTICE AND PROCEDURE.

Application of the Code of Civil Procedure.

17. (*1*) The procedure prescribed in the chapters and sections of the Code of Civil Procedure[3] specified in the second schedule to that Code,**[4] shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits : XIV of 1882.

[1] For instance of a notification issued under this power, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 493.

[2] For notifications issued under this power in—
(*a*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 493;
(*b*) Burma, *see* Burma Rules Manual, Ed. 1897, p. 181; this notification issued originally under Act XI of 1865 and was kept in force by s. 2 (*2*) of this Act.

[3] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

[4] The words "as amended by this Act" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI.

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Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(*2*) Where a person has become liable as surety under the proviso to sub-section (*1*), the security may be realized in manner provided by section 253 of the Code of Civil Procedure.[1]

Trial of suits by Registrar.

18. (*1*) Suits cognizable by the Registrar under section 12, sub-sections (*3*) and (*4*), shall be tried by him and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

(*2*) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

Admission, return and rejection of plaints by Registrar.

19. (*1*) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it.

(*2*) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him:

Provided that where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected, the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

Passing of decrees by Registrar on confession.

20. (*1*) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge.

(*2*) Where a decree has been passed by the Registrar under sub-section (*1*), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself.

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[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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Execution of decrees by Registrar.

21. (*1*) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

(*2*) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (*1*), or the Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(*3*) The period of fifteen days mentioned in sub-section (*2*) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877,[1] as though the application of the party were an application for review of judgment. XV of 1877.

Adjournment of cases by chief ministerial officer.

22. When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

Return of plaints in suits involving questions of title.

23. (*1*) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immoveable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(*2*) When a Court returns a plaint under sub-section (*1*), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure[2] and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877,[1] be XIV of 1882. XV of 1877.

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[1] Printed, General Acts, Vol. III, Ed. 1898, p. 75.
[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

Appeal from certain orders of Courts of Small Causes.

24. Where an order specified in section 588, clause (*29*), of the Code of Civil Procedure [1] is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court.

XIV of 1882.

Revision of decrees and orders of Courts of Small Causes.

25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

26. [*Amendment of the second schedule to the Code of Civil Procedure.*] *Rep. by the Presidency Small Cause Courts Law Amendment Act, 1888 (X of 1888), s. 4.*

Finality of decrees and orders.

27. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

CHAPTER V.

Supplemental Provisions.

Subordination of Courts of Small Causes.

28. (*1*) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall—

(*a*) keep such registers, books and accounts as the High Court from time to time prescribes, and

(*b*) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for records, returns and statements in such form and manner as the authority making the requisition directs.

(*2*) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established.

Seal.

29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

Abolition of Courts of Small Causes.

30. The Local Government may, by order in writing, abolish a Court of Small Causes.

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[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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Saving of power to appoint Judge of Court of Small Causes to other office.

31. (*1*) Nothing in this Act shall be construed to prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court[1] or to be a Magistrate of any class or to hold any other public office.

(*2*) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Application of Act to Courts invested with jurisdiction of Court of Small Causes.

32. (*1*) So much of Chapters III and IV as relates to—

(*a*) the nature of the suits cognizable by Courts of Small Causes,

(*b*) the exclusion of the jurisdiction of other Courts in those suits,

(*c*) the practice and procedure of Courts of Small Causes,

(*d*) appeal from certain orders of those Courts and revision of cases decided by them, and

(*e*) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(*2*) Nothing in sub-section (*1*) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

Application of Act and Code to Court so invested as to two Courts.

33. A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure,[2] be deemed to be different Courts. XIV of 1882.

Modification of Code as so applied.

34. Notwithstanding anything in the last two foregoing sections,—

(*a*) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(*b*) when a Court, in the exercise of its jurisdiction in suits of a Civil nature which are not cognizable by a Court of Small Causes,

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[1] For instances of notifications issued under this power, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 123.

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,—

XIV of 1882. the documents mentioned in section 224 of the Code of Civil Procedure[1] shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

Continuance of proceedings of abolished Courts.

35. (*1*) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(*2*) Nothing in this section applies to cases for which special provision is

XIV of 1882. made in the Code of Civil Procedure[1] as extended to Courts of Small Causes or in any other enactment for the time being in force.

Amendment of Indian Limitation Act.

36. In the third division of the second schedule to the Indian Limitation

XV of 1877. Act, 1877,[2]—

(*a*) after No. 160 the following shall be inserted, namely :—

"160A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto.	The date of the decree or order."

and (*b*) in No. 173, the words, figures and letter "No. 160A and" shall be inserted before the word and figures "No. 162."

Publication of certain orders.

37. All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette.

THE FIRST SCHEDULE.

[ENACTMENTS REPEALED.]

Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(*See section 15.*)

(1) A suit concerning an act or order purporting to be done or made by

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.
[2] Printed, General Acts, Vol. III, Ed. 1898, p. 75.

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the Governor General in Council or a Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or a Local Government;

(2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office;

(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;

(4) a suit for the possession of immoveable property or for the recovery of an interest in such property;

(5) a suit for the partition of immoveable property;

(6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage;

(7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immoveable property;

(8) a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto;[1]

(9) a suit concerning the liability of land to be assessed to land-revenue;

(10) a suit to restrain waste;

(11) a suit for the determination or enforcement of any other right to or interest in immoveable property;

(12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive periodically recurring right to discharge the functions of an office;

(13) a suit to enforce payment of the allowance or fees respectively called *malikana* and *haqq*, or of cesses or other dues when the

[1] For notifications issued under this article for—
(1) the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 224;
(2) Burma, *see* the Burma Rules Manual, Ed. 1897, p. 181.

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cesses or dues are payable to a person by reason of his interest in immoveable property or in an hereditary office or in a shrine or other religious institution;

X of 1870. (14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870,[1] the whole or any part of the compensation;

(15) a suit for the specific performance or rescission of a contract;

(16) a suit for the rectification or cancellation of an instrument;

(17) a suit to obtain an injunction;

(18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution;

XIV of 1882. (19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332 of the Code of Civil Procedure;[2]

(20) a suit instituted under section 283 or section 332 of the Code of Civil Procedure;[2]

(21) a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian;

(22) a suit for property which the plaintiff has conveyed while insane;

(23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity;

(24) a suit to contest an award;

XIV of 1882. (25) a suit upon a foreign judgment as defined in the Code of Civil Procedure[2] or upon a judgment obtained in British India;

(26) a suit to compel a refund of assets improperly distributed under section 295 of the Code of Civil Procedure;[2]

X of 1865. V of 1881. (27) a suit under the Indian Succession Act, 1865,[3] section 320 or section 321, or under the Probate and Administration Act, 1881,[4] section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;

(28) a suit for a legacy or for the whole or a share of a residue

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[1] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI, Ed. 1898.
[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.
[3] Printed, General Acts, Vol. I, Ed. 1898, p. 468.
[4] Printed, General Acts, Vol. III, Ed. 1898, p. 339.

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bequeathed by a testator, or for the whole or a share of the property of an intestate;

(29) a suit—

(*a*) for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution;

(*b*) for an account of partnership transactions; or

(*c*) for a balance of partnership-account, unless the balance has been struck by the parties or their agents;

(30) a suit for an account of property and for its due administration under decree;

(31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant;

(32) a suit for a general average loss or for salvage;

(33) a suit for compensation in respect of collision between ships;

(34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy;

(35) a suit for compensation—

(*a*) for loss occasioned by the death of a person caused by actionable wrong;

(*b*) for wrongful arrest, restraint or confinement;

(*c*) for malicious prosecution;

(*d*) for libel;

(*e*) for slander;

(*f*) for adultery or seduction;

(*g*) for breach of contract of betrothal or promise of marriage;

(*h*) for inducing a person to break a contract made with the plaintiff;

(*i*) for obstruction of an easement or diversion of a watercourse;

(*j*) for illegal, improper or excessive distress or attachment;

(*k*) for improper arrest under Chapter XXXIV of the Code of Civil Procedure [1] or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code; or XIV of 1882.

(*l*) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;

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[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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(36) a suit by a Muhammadan for exigible (*mu'ajjal*) or deferred (*mu'wajjal*) dower;

(37) a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce;

(38) a suit relating to maintenance;

(39) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or other successor in title;

(40) a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land-revenue, village-expenses and other sums;

(41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family in respect of a payment made by him on account of the property or family;

(42) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property;

(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue;

(44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

THE NATIVE PASSENGER SHIPS ACT, 1887.

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SCHEDULE—ENACTMENTS REPEALED.

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ACT No. X OF 1887.[1]

[*24th February, 1887.*]

An Act to consolidate and amend the law relating to Native Passenger Ships.

WHEREAS it is expedient to consolidate and amend the law relating to native passenger ships; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title.

1. This Act may be called the Native Passenger Ships Act, 1887.

Extent and application.

2. (*1*) It extends to the whole of British India, and applies—

(*a*) to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty ;

(*b*) to all native Indian subjects of Her Majesty without and beyond British India ; and,

(*c*) subject to the exceptions mentioned in sub-section (*2*), to ships carrying as passengers more than thirty natives of Asia or Africa.

(*2*) But it does not apply—

(i) to any ship-of-war, troopship, transport or other ship belonging to the Royal Navy or Her Majesty's Indian Marine Service, or

(ii) to any other ship for the time being in the service of Her Majesty, or

(iii) to any ship-of-war belonging to any Foreign Prince or State, or

(iv) to any steam-ship not carrying as passengers more than sixty natives of Asia or Africa, or

(v) to any ship not intended to carry natives of Asia or Africa as passengers to or from any port in British India.

(*3*) Notwithstanding anything in sub-sections (*1*) and (*2*), the Local Government may, with the previous sanction of the Governor General in Council, declare all or any of the provisions of this Act to apply to sailing-ships, or any class of sailing-ships, carrying as passengers more than fifteen

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[1] *Cf.* the Merchant Shipping Act, 1852 (16 & 17 Vict., c. 84), since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 834; for Report of the Select Committee, *see ibid*, 1887, Pt. IV, p. 37; and for Proceedings in Council, *see ibid*, 1886, Supplement, pp. 1189 and 1193, and *ibid*, 1887, Pt. VI, p. 27.

On and from the 6th October, 1896, Act X of 1887 ceased to apply to pilgrim ships. On that date the Pilgrim Ships Act, 1895 (XIV of 1895), which repeals Act X of 1887, so far as it affects such ships, was brought into force, *see* s. 4 of Act XIV of 1895 and Gazette of India, 1896, Pt. I, p. 800.

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natives of Asia or Africa, and to steam-ships, or any class of steam-ships, carrying as passengers more than thirty such natives.

3. This Act shall come into force on such day as the Governor General in Council, by notification in the Gazette of India, appoints.[1] Commencement.

4. (*1*) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof. Repeal.

(*2*) But all ports, places and officers appointed, rules, declarations and exemptions made, bonds executed, directions given and certificates granted under any of those enactments shall, so far as may be, be deemed to be respectively appointed, made, executed, given and granted under this Act; and

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

5. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(*1*) "ship" means a ship to which this Act applies:

(*2*) "passenger" means a passenger by a ship who is a native of Asia or Africa of the age of twelve years or upwards and is not on the articles of the ship as one of the crew; but it does not include either a passenger in attendance on a person who is not a native of Asia or Africa, or a child under one year of age; and, in the computation of passengers for any of the purposes of this Act, two persons of the age of one year or upwards and under the age of twelve years shall be reckoned as one passenger:

(*3*) "long voyage" means, subject to the provisions of this Act, any voyage during which the ship performing it will in ordinary circumstances be one hundred and twenty hours or upwards continuously out of port:

(*4*) "short voyage" means, subject to the provisions of this Act, any voyage during which the ship performing it will not in ordinary circumstances be one hundred and twenty hours continuously out of port:

(*5*) "voyage," when used without the prefix "long" or "short," means the whole distance between the ship's port or place of departure and her final port or place of arrival:

(*6*) "Chief Customs-officer" means the chief executive officer of sea-customs in any port or place to which this Act applies: and

(*7*) "Magistrate" means a person exercising powers not inferior to those of a Magistrate of the second class.

The Act came into force on 1st June, 1887, *see* Gazette of India, 1887, Pt. I, p. 250.

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CHAPTER II.

RULES FOR ALL VOYAGES.

Ships to sail only from places appointed by the Government.

6. (*1*) A ship carrying passengers shall not depart or proceed from, or discharge passengers at, any port or place [1] within British India other than a port or place appointed in this behalf by the Local Government.

(*2*) After a ship has departed or proceeded on a voyage from a port or place so appointed, a person shall not be received on board as a passenger except at some other port or place so appointed.

Notice to be given of day of sailing.

7. (*1*) The master, owner or agent of a ship so departing or proceeding shall give notice to an officer appointed in this behalf by the Local Government [2] that the ship is to carry passengers, and of her destination, and of the proposed time of sailing.

(*2*) The notice shall be given not less than twenty-four hours before that time.

Power to enter on and inspect ship.

8. After receiving the notice, the officer aforesaid or a person authorized by him shall be at liberty at all times to enter on the ship and inspect her and her fittings and the provisions and stores in her.

Ship not to sail without two certificates.

9. (*1*) A ship intended to carry passengers shall not commence a voyage from a port or place appointed under this Act, unless the master holds two certificates to the effect mentioned in the two next following sections.

(*2*) The officer whose duty it is to grant a port-clearance for the ship shall not grant it unless the master holds those certificates.

Contents of certificate A.

10. The first of the certificates (hereinafter called "certificate A") shall state that the ship is seaworthy and properly equipped, fitted and ventilated, and the number of passengers which she is capable of carrying.

Contents of certificate B.

11. The second of the certificates (hereinafter called "certificate B") shall state—

(*a*) the voyage which the ship is to make, and the intermediate ports, if any, at which she is to touch;

(*b*) that she has the proper complement of officers and seamen;

(*c*) that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for the ship by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed, and sufficient to supply the

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[1] For port appointed under this section in—
(*1*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxvi;
(*2*) Burma, *see* Burma Laws List, Ed. 1897, p. 253;
(*3*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 324.

[2] For officers appointed under this section in conjunction with ss. 17 and 37 and ss. 17, 37 and 51, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxvi.

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passengers on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the scale for the time being prescribed by those rules;

(*d*) that the master holds certificate A;

(*e*) if the ship is to make a short voyage in a season of foul weather, and to carry upper-deck passengers, that she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather;

(*f*) if she is to carry passengers to any port in the Red Sea, that she is propelled principally by steam, and, if she is to carry more than one hundred passengers to any such port, that she has on board a medcial officer licensed in accordance with the rules under this Act; and

(*g*) such other particulars, if any, as may be prescribed by those rules.

Grant of certificates.

12. The person by whom certificate A and certificate B are to be granted shall be the officer appointed under section 7.

Substitute for certificate A.

13. Where the master of a ship produces to that officer either of the following certificates, namely:—

(*a*) a valid certificate granted by the Board of Trade or by a British Colonial Government, or

(*b*) a certificate granted under the authority of a British Indian Government, on a date not more than one year before the proposed day of sailing, and in force and applicable to the voyage on which the ship is to proceed or the service on which she is about to be employed,

the officer may, if the particulars required by section 10 are certified thereby, take the certificate as evidence of those particulars, and it shall then be deemed to be a certificate A for the purposes of this Act.

Survey of ship.

14. (*1*) After receiving the notice required by section 7, the officer appointed under that section may, if he thinks fit, cause the ship to be surveyed at the expense of the master or owner by competent surveyors, who shall report to him whether the ship is, in their opinion, seaworthy and properly equipped, fitted and ventilated for the voyage which she is to make:

Provided that he shall not cause a ship holding a certificate mentioned in section 13, clause (*a*) or clause (*b*), to be surveyed unless by reason of the ship having met with damage or having undergone alterations, or on other reasonable ground, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for the voyage.

(*2*) If the officer causes a survey to be made of a ship holding any such certificate, and the surveyors report that the ship is seaworthy and properly

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equipped, fitted and ventilated for the voyage, and that there was no reasonable ground why the officer should have thought it likely that she would be found unseaworthy, or not properly equipped, fitted or ventilated for the voyage, the expense of the survey shall be paid by the Local Government.

Discretion as to grant of certificate.

15. (*1*) The officer authorized to grant a certificate under this Act in respect of a ship shall not grant it unless he is satisfied that she has not on board any cargo likely from its quality, quantity or mode of stowage to prejudice the health or safety of the passengers.

(*2*) But save as aforesaid, and subject to the provisions of sub-section (*3*) it shall be in the discretion of the officer to grant or withhold the certificate.

(*3*) In the exercise of that discretion that officer shall be subject to the control of the Local Government, and of any intermediate authority [1] which that Government appoints in this behalf.

Copy of certificates to be exhibited.

16. The master or owner shall post up in a conspicuous part of the ship, so as to be visible to persons on board thereof, a copy of each of the certificates granted under this Act in respect of the ship, and shall keep those copies so posted up throughout the voyage.

Supply by passengers of their own food.

17. If an officer appointed in this behalf by the Local Government is satisfied that a passenger has brought on board a ship for his own use food of the quality and in the quantity for the time being prescribed by the rules under this Act, the requirements of this Act respecting the supply of food for passengers shall not apply so far as regards the supply of food for that passenger.

CHAPTER III.

Rules for Short Voyages.

Space to be available for passengers.

18. (*1*) For seasons of fair weather a ship performing a short voyage shall, subject to the provisions of this Act, contain in the between-decks at least six superficial feet and thirty-six cubic feet of space available for every between-decks passenger, and on the upper-deck at least four superficial feet available for each such passenger and six superficial feet available for each upper-deck passenger.

(*2*) For seasons of foul weather a ship propelled by sails and performing a short voyage shall, subject as aforesaid, contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space available for every

[1] For instance of such an appointment, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 225.

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between-decks passenger, and on the upper-deck at least four superficial feet available for each such passenger and twelve superficial feet available for each upper-deck passenger.

(*3*) For seasons of foul weather a ship propelled by steam, or partly by steam and partly by sails, and performing a short voyage, shall, subject as aforesaid, contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space available for every between-decks passenger, and on the upper-deck at least four superficial feet available for each such passenger and nine superficial feet available for each upper-deck passenger.

(*4*) But in seasons of foul weather a ship shall not carry upper-deck passengers unless she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather.

Ship taking additional passengers at intermediate place.

19. If a ship performing a short voyage takes additional passengers on board at an intermediate port or place, the master shall obtain from the officer appointed at that port or place under section 7 a supplementary certificate stating—

(*a*) the number of passengers so taken on board, and

(*b*) that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for the ship by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed and sufficient to supply the passengers on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the scale for the time being prescribed by those rules :

Provided that if the certificate B held by the master of the ship states that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for her by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed, and sufficient to supply the full number of passengers which she is capable of carrying, the master shall not be bound to obtain any such supplementary certificate.

Deaths on voyage.

20. When the ship reaches her final port or place of arrival, the master shall notify to such officer[1] as the Governor General in Council appoints in this behalf the date and supposed cause of death of every passenger dying on the voyage.

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[1] For officers appointed under this section, *see* Notification No. 1353, dated 14th March, 1889, Gazette of India, 1889, Pt. I, p. 153.

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CHAPTER IV.

Rules for Long Voyages.

Space to be available for passengers.

21. (*1*) A ship propelled by sails and performing a long voyage shall, subject to the provisions of this Act, contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space available for every passenger.

(*2*) A ship propelled by steam, or partly by steam and partly by sails, and performing a long voyage, shall, subject as aforesaid, contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space available for every passenger.

Statements concerning passengers.

22. The master of a ship departing or proceeding on a long voyage from any port or place in British India shall sign two statements, specifying the number and the respective sexes of all the passengers, and the number of the crew, and shall deliver them to the officer appointed under section 7, who shall thereupon, after having first satisfied himself that the numbers are correct, countersign and return to the master one of the statements.

Deaths on voyage.

23. The master shall note in writing on the statement returned to him, and on any additional statement to be made under the next following section, the date and supposed cause of death of any passenger who may die on the voyage, and shall, when the ship arrives at her port or place of destination or at any port or place at which it may be intended to land passengers, and before any passengers leave the ship, produce the statement, with any additions thereto made, to a person lawfully exercising consular authority on behalf of Her Majesty at the port or place or to the Chief Customs-officer thereat or the officer (if any) appointed there under section 7.

Ship taking additional passengers at intermediate place.

24. (*1*) In either of the following cases, namely :—

(*a*) if after the ship has departed or proceeded on a long voyage any additional passengers are taken on board at a port or place within British India appointed under this Act for the embarkation of passengers, or

(*b*) if the ship upon her voyage touches or arrives at any such port or place, having previously received on board additional passengers at any place beyond British India,

the master shall obtain a fresh certificate to the effect of certificate B from the officer appointed at that port or place under section 7, and shall make additional statements specifying the number and the respective sexes of all the additional passengers.

(*2*) All the foregoing provisions of this Act with respect to certificate B

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and statements concerning passengers shall be applicable to any certificate granted or statement made under this section.

25. A ship carrying passengers from or to any port in British India to or from any port in the Red Sea shall be propelled principally by steam.

Certain ships to be propelled by steam.

26. A ship carrying more than one hundred passengers from or to any port in British India to or from any port in the Red Sea shall have on board a medical officer licensed in accordance with the rules under this Act.

Certain ships to carry medical officer.

27. A ship carrying passengers from or to any port in British India other than Aden to or from any port in the Red Sea shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

Ships carrying passengers to or from port in Red Sea to touch at Aden.

28. The authority at Aden empowered to grant the bill of health shall refuse to grant it if the ship has on board a greater number of passengers than the number allowed for the ship by or under this Act, and may refuse to grant it if the requirements of any rule under this Act are not complied with on board the ship.

Bill of health at Aden.

29. In the case of a ship carrying passengers from any port in British India other than Aden to any port in the Red Sea, the officer whose duty it is to grant a port-clearance for the ship shall not grant the clearance unless and until the master, owner or agent of the ship and two sureties resident in British India have executed in favour of the Secretary of State for India in Council a joint and several bond, for the sum of five thousand rupees conditioned—

Bond where ship clears for port in Red Sea.

(*a*) that the ship shall touch at Aden on the outward voyage and there obtain a clean bill of health, and shall do the same on the homeward voyage if the ship continues to carry more than sixty passengers, and

(*b*) that the master and medical officer (if any) of the ship shall comply with, on the outward voyage, and also on the homeward voyage if the ship continues to carry more than sixty passengers, the provisions of this Act and of such rules relating to ships carrying passengers between ports in British India and ports in the Red Sea as the Governor General in Council may make under this Act.

30. (*1*) The Local Government may direct that no passenger shall be received on board any ship or any ship of a specified class carrying passengers from any port in British India to any port in the Red Sea [1] unless and until

Power for Local Government to direct medical inspection

[1] As to inspection of ships and persons sailing to any port whatsoever, *see* s. 2 (*2*) (*a*) of the Epidemic Diseases Act, 1897 (III of 1897), printed, General Acts, Vol. VI, Ed. 1898.

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of passengers.

the passenger has been inspected, at such time and place, and in such manner, as the Local Government may fix in this behalf, by a medical officer to be appointed by that Government for the purpose.

(*2*) If in the opinion of the officer making an inspection under the section a passenger is suffering from any dangerously infectious or contagious disease, the passenger shall not be permitted to embark.

CHAPTER V.

PENALTIES.

Penalty for ship unlawfully departing or receiving passengers on board.

31. If a ship departs or proceeds on a voyage from, or discharges passengers at, any port or place within British India in contravention of the provisions of section 6, sub-section (*1*), or section 9, or if a person is received as a passenger on board a ship in contravention of the provisions of section 6, sub-section (*2*), the master or owner shall, for every passenger carried in the ship, or for every passenger so discharged or received on board, be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to one month, or with both, and the ship, if found within two years in any port or place within British India, may be seized and detained by a Chief Customs-officer until the penalties incurred under this Act by her master or owner have been adjudicated, and the payment of the fines imposed on him under this Act, with all costs, has been enforced, under the provisions of this Act :

Provided that the aggregate term of imprisonment awarded under this section shall not exceed one year.

Penalty for opposing entry on or inspection of ships.

32. If a person impedes or refuses to allow the entry or inspection authorized by or under this Act, he shall be punished with fine which may extend to five hundred rupees for each offence, or with imprisonment for a term which may extend to three months, or with both.

Penalty for not exhibiting copy of certificates.

33. If a master or owner without reasonable excuse, the burden of proving which shall lie upon him, fails to comply with the requirements of section 16 with respect to the posting of copies of certificates, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

Penalty for not complying with requirements as to statements concerning passengers and

34. If a master fails to comply with any of the requirements of section 22 or section 23, as to the statements concerning passengers, or wilfully makes any false entry or note in or on any such statement, or without reasonable excuse, the burden of proving which shall lie upon him, fails to obtain any such supplementary certificate as is mentioned in section 19, or to report deaths

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as required by section 20, or to obtain any such fresh certificate, or to make any such statement of the number of additional passengers, as is mentioned in section 24, he shall be punished with fine which may extend to five hundred rupees for every such offence, or with imprisonment for a term which may extend to three months, or with both.

certain other matters.

35. If a master, after having obtained any of the certificates mentioned in section 9, section 19 or section 24, fraudulently does or suffers to be done anything whereby the certificate becomes inapplicable to the altered state of the ship, her passengers or other matters to which the certificate relates, he shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty for fraudulent alteration in ship after certificate obtained.

36. If a master without reasonable excuse, the burden of proving which shall lie upon him, omits to supply to any passenger the allowance of food, fuel and water prescribed by the rules under this Act, he shall be punished with fine which may extend to twenty rupees for every passenger who has sustained detriment by the omission.

Penalty for failing to supply passengers with prescribed provisions.

37. (*1*) If a ship carrying passengers to or from any port or place in British India has on board a number of passengers which is greater than the number allowed for the ship by or under this Act, the master and owner shall, for every passenger over and above that number, be each punished with fine which may extend to twenty rupees, and the master shall further be liable to imprisonment for a term which may extend to one week in respect of each such passenger:

Penalty for having excessive number of passengers on board.

Provided that the aggregate term of imprisonment awarded under this section shall not exceed six months.

(*2*) Any officer authorized in this behalf by the Local Government may cause all passengers over and above the number allowed by or under this Act to disembark and may forward them to any port at which they may have contracted to land, and recover the cost of so forwarding them from the master or owner of the ship as if the cost were a fine imposed under this Act, and a certificate under the hand of that officer shall be conclusive proof of the amount of the cost aforesaid.

38. If a ship carrying passengers from any port or place beyond British India to any port or place in British India has on board a number of passengers greater either than the number allowed for the ship by or under this Act or than the number allowed by the license or certificate, if any, granted in respect of the ship at her port or place of departure, the master and owner shall, for every passenger in excess of that number, be each punished with fine which may extend to twenty rupees.

Penalty for bringing passengers from foreign port in excess of authorized number.

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Penalty for landing passenger at a place other than that at which he has contracted to land.

39. If the master of a ship lands any passenger at any port or place other than the port or place at which the passenger may have contracted to land, unless with his previous consent, or unless the landing is made necessary by perils of the sea or other unavoidable accident, the master shall, for every such offence, be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

Penalty for making voyage in contravention of contract with passengers.

40. If a ship, otherwise than by reason of perils of the sea or other unavoidable accident, touches at any port or place in contravention of any express or implied contract or engagement with the passengers with respect to the voyage which the ship was to make and the time which that voyage was to occupy, whether the contract or engagement was made by public advertisement or otherwise, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Penalty on master and owner of certain ships not propelled by steam.

41. If a ship carrying passengers from or to any port in British India to or from any port in the Red Sea is not propelled principally by steam as required by section 25, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months, or with both.

Penalty on master of certain ships sailing without medical officer.

42. If a ship carrying more than one hundred passengers from or to any port in British India to or from any port in the Red Sea has not on board a medical officer as required by section 26, the master of the ship shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Penalty for not obtaining bill of health at Aden.

43. If in the case of a ship to which section 27 applies the master without reasonable excuse, the burden of proving which shall lie upon him, fails to touch at Aden, or leaves that port without having obtained a bill of health under that section, he shall, for every such offence, be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty on master or medical officer of certain ships disobeying rules.

44. If in the case of any such ship as is referred to in the last foregoing section the master or the medical officer, if any, of the ship without reasonable excuse, the burden of proving which shall lie upon him, breaks, or omits or neglects to obey, any rule under this Act applicable to the ship, he shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Penalty on master receiving passenger in con-

45. If the master of a ship to which a direction under section 39 applies knowingly receives on board the ship any person in contravention of that section, he shall be punished with fine which may extend to five hundred rupees

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for each person so received, or with imprisonment which may extend to three months, or with both. travention of section 30.

Procedure.

46. (*1*) Offences against this Act shall be punishable by a Magistrate. Adjudication of offences, and levy of fine by distress on ship.

(*2*) If the person on whom a fine is imposed under this Act is the master or owner of a ship, and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the ordinary means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

47. For the purpose of the adjudication of penalties under this Act, every offence against its provisions shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found. Jurisdiction.

48. The penalties to which masters and owners of ships are made liable by this Act shall be enforced only on information laid at the instance of officers appointed to grant certificates under this Act, or, at any port or place where there is no such officer, at the instance of the Chief Customs-officer. Authority to institute proceedings for penalties.

49. A Magistrate imposing a fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any detriment which he may. have sustained by the act or default in respect of which the fine is imposed, or in or towards payment of the expenses of the prosecution. Application of fines.

50. (*1*) Whenever in the course of any legal proceeding under this Act the testimony of a witness is required in relation to the subject-matter of the proceeding, any deposition which he may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where the proceeding is instituted), or before any British consular officer elsewhere, shall be admissible in evidence on proof that the witness cannot be found within the jurisdiction of the Court in which the proceeding is instituted: Depositions of absent witnesses.

Provided that the deposition shall not be admissible unless—

(*a*) it is authenticated by the signature of the Justice, Magistrate or consular officer;

(*b*) it was made in the presence of the person accused; and

(*c*) the fact that it was so made is certified by the Justice, Magistrate or consular officer.

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(*2*) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

Information to be sent to ports of embarkation and discharge.

51. (*1*) The Chief Customs-officer, or other officer, if any, appointed by the Local Government in this behalf, at any port or place within British India at which a ship carrying passengers touches or arrives, shall, with advertence to the provisions of this Act, send any particulars which he may deem important respecting the ship, and the passengers carried therein, to the officer at the port or place from which the ship commenced her voyage, and to the officer at any other port or place within British India where the passengers or any of them embarked or are to be discharged.

(*2*) The Chief Customs-officer, or other officer, if any, appointed by the Local Government in this behalf, at any port or place in British India at which a ship to which this Act applies touches or arrives, may enter on the ship and inspect her in order to ascertain whether the provisions of this Act as to the number of passengers and other matters have been complied with.

Report of Consul.

52. In any proceeding for the adjudication of any penalty incurred under this Act any document purporting to be a report of such particulars as are referred to in sub-section (*1*) of the last foregoing section, or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is had.

Power for Governor General in Council and Local Government to make rules.

53. (*1*) The Governor General in Council may make rules[1] consistent with this Act to regulate, in the case of any ship or class of ships, all or any of the following matters :—

(*a*) the scale on which food, fuel and water are to be supplied to the passengers or to any class or classes of passengers, and the quality of the food, fuel and water;

(*b*) the medical stores and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency;

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[1] *See* Notification No. 1354, dated 14th March, 1889, Gazette of India, 1889, Pt. I, p. 154.

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(*c*) the licensing and appointment of medical officers in cases where they are required by this Act to be carried;

(*d*) the boats, anchors and cables to be provided on board;

(*e*) the instruments for purposes of navigation to be supplied;

(*f*) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent such fires;

(*g*) the provision of appliances for saving life and of means for making signals of distress, and the supply of lights inextinguishable in water and fitted for attachment to life-buoys;

(*h*) the functions of the master, medical officer (if any) and other officers of the ship during the voyage;

(*i*) the access of between-decks passengers to the upper deck; and,

(*j*) generally, to carry out the purposes of this Act.

(*2*) The Local Government may, with the previous sanction of the Governor General in Council, make rules[1] consistent with this Act to regulate, in the case of any ship or class of ships,—

(*a*) the local limits within which, and the time and mode at and in which, passengers are to be embarked or discharged at any port or place appointed under this Act in that behalf; and

(*b*) the time within which the ship or any ship of the class is to depart or proceed on her voyage after commencing to take passengers on board.

(*3*) In making a rule under this section the authority making it may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and when the breach is a continuing breach with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

(*4*) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

Appointment of officers.

54. The Local Government shall appoint[2] such persons as it thinks fit to exercise and perform the powers and duties which are conferred and imposed by this Act or may be conferred and imposed thereunder.

Power to declare what shall be deemed "seasons of fair weather and "long voyages".

55. The Governor General in Council may declare, by notification[3] in the Gazette of India, what shall be deemed to be, for the purposes of this Act, "seasons of fair weather" and "seasons of foul weather," and, for sailing-ships and steam-ships respectively, a "long voyage" and a "short voyage".

[1] For rules made under this section for Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxvi.

[2] For instance of appointment made under s. 54, *see* Burma Laws List, Ed. 1897, p. 253.

[3] *See* Notifications Nos. 1355 and 2460, dated respectively 14th March and 16th May, 1889, Gazette of India, 1889, Pt. I, pp. 161 and 287, respectively.

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Power to prescribe space to be available for passengers.

56. The Governor General in Council may by order prescribe[1] in the case of any ship or class of ships and for all or any voyages the number of superficial or of cubic feet of space to be available for passengers; and the order shall be alternative to, or override, as the Governor General in Council may direct, the provisions of sections 18 and 21 so far as they apply to that ship or class of ships.

Power to exempt ship from provisions of Act.

57. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, subject to such conditions as it thinks fit, exempt any ship or class of ships from any provision of this Act.

(*2*) In imposing a condition under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and when the breach is a continuing breach with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

SCHEDULE.

ENACTMENTS REPEALED.

(*See section 4.*)

Number and year.	Title.	Extent of repeal.
VIII of 1876 . . .	Native Passenger Ships Act, 1876 .	The whole.
XVII of 1883 . . .	Native Passenger Ships Act, 1883 .	The whole.
[2] VII of 1884 . . .	Indian Steam-ships Act, 1884 . .	Section 41.

ACT No. XIII OF 1887.[3]

[*11th March, 1887.*]

An Act to provide for the protection of person and property from the risks incident to the supply and use of electricity for lighting and other purposes.

WHEREAS it is expedient to control the supply and use of electricity for lighting and other purposes;

[1] *See* Notification No. 1356, dated 14th March, 1889, Gazette of India, 1889, Pt. I, p. 161.

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 740.

[3] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 954; for Report of the Select Committee, *see ibid*, 1887, Pt. V, p. 58; and for Proceedings in Council, *see ibid*, 1886, Supplement, pp. 1455 and 1607, and *ibid*, 1887, Pt. VI, p. 37.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, p. 467, *see* Gazette of India, 1891, Pt. I, p. 582.

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And whereas in the existing circumstances of the supply and use of electricity in India the exercise of that control by means of licenses or other like methods may be deferred, and it will suffice for the present to provide for the protection of person and property from the risks incident to such supply and use;

It is hereby enacted as follows:—

Title, extent and commencement.

1. (*1*) This Act may be called the Electricity Act, 1887.

(*2*) It shall extend to the whole of British India; and

(*3*) It shall come into force on the first day of July, 1887.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "electricity" includes galvanism, magnetism, magneto-electricity and electro-magnetism:

XIII of 1885. (*2*) expressions defined in the Indian Telegraph Act, 1885,[1] have the meanings assigned to them in that Act:

(*3*) "purpose" includes any purpose except the transmission of a message: and

(*4*) "vessel" includes anything used for the conveyance by water of human beings or of property.[2]

Notice of intention to supply or use electricity.

3. In either of the following cases, namely:—

(*a*) if a person intends to undertake the business of supplying electricity, or

(*b*) if a person intends to use electricity for any public purpose, or in any public place, or in any place where there is likelihood of the public being affected, or in a place in which one hundred or more persons are likely to be assembled, or in a place which is a factory within the meaning of the Indian Factories Act, 1881,[3]

XV of 1881.

the person shall, one week at least before commencing the supply or use, give notice of his intention to the District Magistrate or, in a presidency-town, to the Commissioner of Police.

Power to make rules.

4. (*1*) The Governor General in Council may make such rules[4] as he thinks expedient—

(*a*) for the protection of person and property from injury by reason of contact with, or the proximity of, appliances or apparatus used in the generation or supply of electricity, and

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[1] Printed, *supra*, p. 11.
[2] *Cf.* s. 3(*56*), General Clauses Act, 1897 (X of 1897), printed, General Acts, Vol. VI, Ed. 1898.
[3] Printed, General Acts, Vol. III, Ed. 1898 p. 381.
[4] For rules made under the power conferred by this section, *see* Notification No. 495, dated 3rd December, 1897, Gazette of India, 1897, Pt. I, p. 1112.

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(*b*) for preventing telegraph-lines from being injurously affected by any of those appliances or apparatus.

(*2*) The rules may, among other matters, authorize, or empower a Local Government or other authority to authorize, any officer, either by name or in virtue of his office, to enter, inspect and examine any place, carriage or vessel in which the officer has reason to believe any such appliances or apparatus to be.

(*3*) Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this section on the Governor General in Council, and shall be of the same force as if enacted by this Act.

(*4*) The power to make rules under this section is subject to the condition of the rules being made after previous publication.[1]

Penalities.

5. If a person undertakes the business of supplying electricity, or uses electricity for any such purpose or in any such place as is referred to in section 3, without giving the notice required by that section, or infringes any rule under section 4, or obstructs an officer in the exercise of his authority under any such rule to enter, inspect and examine any place, carriage or vessel, he shall be punished with fine which may extend to five hundred rupees, and if he continues so to supply or use electricity or infringe the rule or obstruct the officer, after notice in writing to desist from so doing has been given to him by the District Magistrate or, in a presidency-town, by the Commissioner of Police, he shall be further punished with fine which may extend to one hundered rupees for every day during which such supply, use, infringement or obstruction continues.

Exercise for the purposes of the Government of the powers of the telegraph-authority.

6. The Governor General in Council may, for the placing of appliances and apparatus for the supply of electricity for any purpose of the Government, confer upon any public officer any of the powers which the telegraph-authority possesses under the Indian Telegraph Act, 1885,[2] with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained. XIII of 1885.

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[1] For procedure, *see* now s. 23, General Clauses Act, 1897 (X of 1897), General Acts, Vol. VI, Ed. 1898.

[2] Printed, *supra*, p. 11.

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THE INDIAN MARINE ACT, 1887.

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ACT No. XIV OF 1887.[1]

[*30th June, 1887.*]

An Act for the better administration of Her Majesty's Indian Marine Service.

WHEREAS by the Indian Marine Service Act, 1884, it is, among other things, enacted that the Governor General of India in Council shall have power, subject to the provisions contained in the Indian Councils Act, 1861,[2] as amended by subsequent Acts, at meetings for the purpose of making laws and regulations, to make laws for all persons employed or serving in, or belonging to, Her Majesty's Indian Marine Service : 47 & 48 Vict., c. 38. 24 & 25 Vict., c. 67.

Provided that—

(*a*) a law made under that power shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, which are defined by the said Indian Marine Service Act to include the high seas between the Cape of Good Hope on the west and the Straits of Magellan on the east, and all territorial waters between those limits ; and

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1887, Pt. V, p. 33 ; for Report of the Select Committee, *see ibid*, p. 57 ; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 12, 15 and 46.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Gazette of India, 1891, Pt. I, p. 582.

[2] Printed, Collection of Statutes relating to India, Ed. 1881, Vol. II, p. 695.

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(*b*) the punishments imposed by any such law for offences shall be similar in character to, and shall not be in excess of, the punishments which may at the time of making the law be imposed for similar offences under the Acts relating to Her Majesty's Navy, except that in the case of persons other than Europeans or Americans imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude;

And whereas it is further provided by the said Indian Marine Service Act that subject to the provisions of that Act a law made thereunder shall be of the same force and effect as an Act of Parliament and shall be taken notice of by all Courts of Justice in the same manner as if it were a Public Act of Parliament;

And whereas in pursuance of the power thus conferred and of all other powers vested in the Governor General in Council in this behalf it is expedient to make such laws as are mentioned in the said Indian Marine Service Act and to make provision in other particulars for the proper regulation of, and otherwise in relation to, the Indian Marine Service;

And whereas the Secretary of State for India in Council has given his previous approval to the passing of this Act;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title and commencement.

1. (*1*) This Act may be called the Indian Marine Act, 1887; and

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf.[1]

Definitions.

2. (*1*) In this Act, unless there is something repugnant in the subject or context,—

(*a*) "person subject to this Act" means a person who is employed or serves in, or belongs to, the Indian Marine Service, and who, if he is not a gazetted officer, has been enrolled in that service in the manner provided by this Act:

(*b*) "gazetted officer" means a person who by virtue of his letter of appointment is holding a position in the Indian Marine Service as—

Commander,	Chief engineer,
First grade officer,	Engineer,
Second grade officer,	Assistant engineer, or
Third grade officer,	Clerk:

[1] The Act came into force on 15th October, 1887, *see* Gazette of India, 1887, Pt. I, p. 500.

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(*c*) "warrant-officer" means a person who by virtue of his appointment is holding a position in the Indian Marine Service as—

Gunner,	Engine-driver, first class,
Apothecary,	Carpenter,
Assistant apothecary,	Hospital assistant, or
Assistant clerk,	General mess steward:

(*d*) "petty officer" means a person who by virtue of his appointment is holding a position in the Indian Marine Service as—

Chief syrang, first class,	Tindal of lascars, first class,
Chief syrang, second class,	Tindal of lascars, second class,
Ship's steward,	Tindal of stokers, first class,
Engine-driver, second class,	Tindal of stokers, second class,
Cook on a salary of not less than fifty rupees per mensem,	Kassaub, first class,
General mess butler,	Kassaub, second class, or
Syrang of lascars, first class,	Cook on a salary of less than fifty rupees per mensem:
Syrang of lascars, second class,	

(*e*) "superior officer", used with reference to an officer of a rank mentioned in clause (*b*), clause (*c*) or clause (*d*) of this sub-section, means an officer of a rank mentioned before his in any of those clauses, and used with reference to any other person subject to this Act, means an officer mentioned in any of those clauses:

(*f*) "commanding officer" means the officer in command of a vessel, whether by special appointment or by the rules or customs of the service, and includes, as regards any persons subject to this Act who are employed otherwise than on board the vessel to which they belong, such officer, if any, as the Governor General in Council appoints, instead of the commanding officer of that vessel, to discharge the functions of commanding officer with respect to those persons:

(*g*) "enemy" includes a pirate or rebel:

(*h*) "Indian Marine Court" means an Indian Marine Court held under this Act:

(*i*) "Criminal Court" means a Court having ordinary criminal jurisdiction in British India or such a Court established elsewhere by the authority of the Governor General in Council: and

(*j*) "prescribed" means prescribed by rules made by the Governor General in Council.

[1](*2*) The Governor General in Council may, by notification in the Gazette

[1] Sub-s. (*2*) of s. 3 was substituted for the original sub-section by the Indian Marine Act, 1888 (XVII of 1888), *see infra*, p. 257.

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of India, vary any of the definitions[1] in clauses (*b*), (*c*) and (*d*) of sub-section (*1*) as occasion may appear to him to require, and the references to those clauses in the definition of the expression "superior officer" in clause (*e*) of that sub-section shall be construed to be references to them as varied by any notification published under this sub-section and for the time being in force.

Procedure on enrolment.

3. (*1*) A person to be enrolled in the Indian Marine Service shall be brought on to the quarter-deck or other suitable place on board ship or on shore, and the commanding or other prescribed officer shall then—

(*a*) cause to be read and explained to him the rules of the service,

(*b*) administer to him an oath of allegiance, and

(*c*) cause him to sign a roll.

(*2*) The rules, oath and roll shall be in prescribed forms.

General power to make rules.

4. In addition to any other rules[2] which may be made under this Act, the Governor General in Council may, by notification in the Gazette of India, make rules consistent with this Act for the guidance of officers, whether military, Indian Marine, civil or political, in all matters connected with its enforcement.

CHAPTER II.

Offences and Punishments.

Misconduct in the Presence of the Enemy.

Misconduct of commanding officer in action.

5. If a commanding officer—

(i) upon signal of battle, or on sight of a vessel of an enemy which it is his duty to engage, does not use his utmost exertion to bring his vessel into action, or

(ii) does not during an action, in his own person and according to his rank, encourage his inferior officers and men to fight courageously, or

(iii) when capable of making a successful defence, surrenders his vessel to the enemy, or

(iv) in time of action improperly withdraws from the fight,

he shall,—

(*a*) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned;

(*b*) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

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[1] For notification varying the definitions of "gazetted officer," "warrant officer" and "petty officer" in clauses (*b*), (*c*) and (*d*) of sub-s. (*1*), *see* Gazette of India, 1888, Pt. I, p. 512.

[2] For rules under s. 4, *see* Gazette of India, 1887, Pt. I, p. 551.

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Not pursuing the enemy or not assisting a friend in view.

6. If any officer subject to this Act—

(i) forbears to pursue the chase of any enemy beaten or flying, or

(ii) does not relieve and assist a known friend in view to the utmost of his power, or

(iii) improperly forsakes his station,

he shall,—

(*a*) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned;

(*b*) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Delaying or discouraging action or service, or deserting post or sleeping on watch.

7. If any person subject to this Act,—

(i) when any action or service is commanded, presumes to delay or discourage the action or service upon any pretence whatever, or

(ii) in the presence or vicinity of the enemy deserts his post or sleeps upon his watch,

he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Misconduct of subordinate officers and men in action.

8. If any person subject to this Act, other than a commanding officer, does not, when ordered to prepare for action, or during an action, use his utmost exertion to carry the orders of his superior officer into execution, he shall,—

(*a*) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned;

(*b*) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Communications with the Enemy.

Corresponding, etc., with the enemy.

9. If any person subject to this Act—

(i) treacherously holds correspondence with or gives intelligence to the enemy, or

(ii) fails to make known to the proper authorities any information which he may have received from the enemy, or

(iii) relieves the enemy with any supplies,

he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Improper communica-

10. If any person subject to this Act holds, without any treacherous intention, any improper communication with the enemy, he shall be dismissed

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with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned. tion with the enemy.

Neglect of Duty.

11. If a person subject to this Act deserts his post or sleeps upon his watch, or negligently performs the duty imposed on him, he shall suffer imprisonment or such other punishment as is hereinafter mentioned. Neglect of duty.

Mutiny.

12. Where a mutiny is accompanied by violence, a person subject to this Act who joins therein shall suffer death or such other punishment as is hereinafter mentioned; and Mutiny accompanied by violence.

a person subject to this Act who does not use his utmost exertions to suppress the mutiny shall,—

(*a*) if he has acted traitorously, suffer death or such other punishment as is hereinafter mentioned;

(*b*) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned;

(*c*) if he has acted from negligence, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

13. Where a mutiny is not accompanied by violence, a ringleader thereof, being a person subject to this Act, shall suffer death or such other punishment as is hereinafter mentioned; and all other persons subject to this Act who join in the mutiny, or do not use their utmost exertions to suppress it, shall suffer imprisonment or such other punishment as is hereinafter mentioned. Mutiny not accompanied by violence.

14. A person subject to this Act who endeavours to seduce any other person subject to this Act from his duty or allegiance to Her Majesty, or endeavours to incite him to commit any act of mutiny, shall suffer death or such other punishment as is hereinafter mentioned. Inciting to mutiny.

15. A person subject to this Act who makes or endeavours to make any mutinous assembly, or leads or incites any other person to join in any mutinous assembly, or utters any words of sedition or mutiny, shall suffer penal servitude or such other punishment as is hereinafter mentioned. Mutinous assembly or uttering seditious words.

16. A person subject to this Act who wilfully conceals any traitorous or mutinous practice or design, or any seditious or mutinous words spoken against Her Majesty, or any practice, design or words tending to the hindrance of the service, shall suffer penal servitude or such other punishment as is hereinafter mentioned. Concealing traitorous, mutinous or seditious practice, design or words.

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Striking or using violence to superior officer.

17. A person subject to this Act who strikes or attempts to strike, or uses or attempts to use any violence against, his superior officer, being in the execution of his office, or otherwise, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Insubordination.

Disobedience or using threatening language to superior officer.

18. A person subject to this Act who wilfully disobeys any lawful command of his superior officer, or uses threatening or insulting language, or behaves with contempt, to his superior officer, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Desertion and Absence without Leave.

Desertion.

19. A person subject to this Act who—

(i) absents himself from his vessel or from the place where his duty requires him to be, with the intention of not returning to that vessel or place; or

(ii) at any time and under any circumstances, when absent from his vessel or place of duty, does any act which shows that he has an intention of not returning to that vessel or place;

shall be deemed to have deserted, and shall suffer penal servitude or such other punishment as is hereinafter mentioned;

and in every such case he shall forfeit all pay, bounty, salvage, prize-money and allowances which may have been earned by him, and all annuities, pensions, gratuities, medals and decorations which may have been granted to him, and also all clothes and effects which he may have left on board the vessel or at the place from which he has deserted, unless it is otherwise directed by the Court by which he is tried or by the Governor General in Council.

Inducing any person to desert.

20. A person subject to this Act who endeavours to seduce any other person subject to this Act to desert shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Breaking out of vessel.

21. A person subject to this Act who, without being guilty of desertion, improperly leaves his vessel or place of duty shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Absence without leave.

22. A person subject to this Act who, without being guilty of desertion or of improperly leaving his vessel or place of duty, is absent without leave shall suffer imprisonment for any period not exceeding ten weeks or such other punishment as the circumstances of the case may require.

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Miscellaneous Offences.

Drunkenness on board ship or on duty.

23. A person subject to this Act who is guilty of any drunkenness on board ship or on duty shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Cruelty or misconduct by officer.

24. An officer subject to this Act who is guilty of cruelty, or of any scandalous or fraudulent conduct, or of any other conduct unbecoming the character of an officer, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Suffering vessel to be lost or imperilled.

25. A person subject to this Act who designedly or negligently, or by any default, loses, strands or hazards, or suffers to be lost, stranded or hazarded any vessel of the Indian Marine Service, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Unlawful taking of goods on board.

26. An officer in command of an Indian Marine vessel who receives on board, or permits to be received on board, the vessel, any goods or merchandise whatsoever, other than for the sole use of the vessel, except gold, silver or jewels, and except goods and merchandise, belonging to any merchant or on board any vessel which may be shipwrecked or in imminent danger either on the sea or in some port, creek, harbour or river, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Government or his superior officer, shall be dismissed from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Embezzling public stores.

27. A person subject to this Act who wastefully expends, embezzles or fraudulently buys, sells or receives any ammunition, provisions or other public stores, or knowingly permits any such wasteful expenditure, embezzlement or fraudulent purchase, sale or receipt, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

28. A person subject to this Act who unlawfully sets fire to any dockyard, victualling yard, steam-factory yard, arsenal, magazine, building or stores, or to any ship, boat or other craft or furniture thereunto belonging, not being the property of an enemy, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Making false documents.

29. A person subject to this Act who knowingly makes or signs a false muster or record or other official document, or who commands, counsels or procures the making or signing thereof, or who aids or abets any other person in the making or signing thereof, shall be dismissed with disgrace from

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the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Malingering or misconduct in hospital.

30. A person subject to this Act who wilfully does any act or wilfully disobeys any order, whether in hospital or elsewhere, with intent to produce or to aggravate any disease or infirmity or to delay his cure, or who feigns any disease, infirmity or inability to perform his duty, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Creating disturbance on account of complaints.

31. A person subject to this Act who has any cause of complaint, either upon the ground of the unwholesomeness of the victuals or upon any other ground, shall quietly make the same known to his commanding officer, and that officer shall inquire into the complaint and shall, as far as he is able, cause the same to be presently remedied, or shall report the case to the Director of Marine; and any person subject to this Act who, upon any pretence whatever, attempts to stir up any disturbance on any such ground shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Offences to the prejudice of good order and discipline not otherwise specified.

32. A person subject to this Act who is guilty of any act, disorder or neglect, to the prejudice of good order and discipline, not hereinbefore specified, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned :

Provided that, if such act, disorder or neglect constitutes an offence punishable under the law of British India with imprisonment for a term which may exceed seven years, the person guilty thereof shall not be tried under this Act as for an offence punishable under this section.

Not assisting in arresting offenders.

33. A person subject to this Act who does not use his utmost exertion to detect, arrest and bring to punishment all offenders against this Act, and does not assist the officers appointed for that purpose, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Contempt of Court.

34. A person subject to this Act, who, being duly summoned or ordered to attend as a witness before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, or to produce any document in his power or control before such a Court or officer, refuses or neglects to attend to give his evidence upon oath or to produce the document, or behaves with contempt to the Court or officer, shall suffer imprisonment which may extend to three months in the case of such refusal or neglect and to one month in the case of such contempt.

False evidence.

35. A person subject to this Act who, when examined on oath before an Indian Marine Court or a commanding officer exercising jurisdiction under

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this Act, intentionally gives false evidence, shall suffer imprisonment for a term which may extend to seven years.

Offences punishable by Ordinary Law.

Offences punishable by ordinary law.

36. If a person subject to this Act is guilty of any criminal offence which if committed in British India would be punishable by the law of British India, he shall, subject to the other provisions of this Act, be liable to the same punishment as might for the time being be awarded in British India by any ordinary criminal tribunal competent to try him if the offence had been committed in British India:

47 & 48 Vict., c. 38.

Provided that, except as authorized by the Indian Marine Service Act, 1884, and by this Act, the punishment awarded for the offence shall not be dissimilar in character to or in excess of the punishment which may at the time of the passing of this Act be imposed for a similar offence under the Acts relating to Her Majesty's Navy.

Punishments.

Schedule of punishments.

37. (*1*) The following punishments may be inflicted under this Act:—

(*a*) death;

(*b*) penal servitude;

(*c*) dismissal with disgrace from the Indian Marine Service;

(*d*) imprisonment;

(*e*) dismissal from the Indian Marine Service;

(*f*) loss of seniority as an officer for a specified time or otherwise;

(*g*) dismissal from the vessel to which the offender belongs;

(*h*) severe reprimand, or reprimand;

(*i*) disrating a warrant-officer or petty officer or any other person below that rank;

(*j*) forfeiture of pay, bounty, salvage, prize-money and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations granted to, the offender, or of any one or more of the above particulars; also, in the case of desertion, of all clothes and effects left by the deserter on board the vessel to which he belongs.

(*2*) Each of the above punishments shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

Regulations as to the infliction of punishments.

38. The following regulations shall apply to the infliction of punishments:—

(*1*) The punishment of penal servitude may, except when otherwise

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provided by this Act, be inflicted for the term of life or for any other term not less than four years.

(*2*) In the case of persons other than Europeans or Americans, transportation for life or for any term not less than four years, or imprisonment for any term not exceeding fourteen years, shall be substituted for penal servitude.

(*3*) The punishment of penal servitude or of transportation, or of imprisonment for more than two years when substituted for penal servitude under the provisions of this Act, shall in all cases involve dismissal from the Indian Marine Service, with or without disgrace, as the prescribed authority may direct.

(*4*) Dismissal with disgrace shall involve in all cases forfeiture of all pay, bounty, salvage, prize-money and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations granted to, the offender, and an incapacity to serve the Government again in any capacity.

(*5*) A sentence of dismissal with disgrace may in any case be accompanied by a sentence of imprisonment.

(*6*) Except as otherwise provided by this Act, a sentence of imprisonment passed otherwise than under clause (*2*) of this section may extend to two years.

(*7*) A sentence of imprisonment may be accompanied by a direction that the imprisonment shall be rigorous for the whole or any part of the term thereof.

(*8*) When a sentence of imprisonment is passed on a warrant-officer or petty officer or any other person below that rank, it may be accompanied by a direction disrating the officer or person.

(*9*) A sentence of imprisonment shall in all cases be accompanied by forfeiture of pay and allowances during the imprisonment.

Scale of punishments.

39. Subject to the foregoing regulations and the other provisions of this Act, where any punishment is specified by this Act as the penalty for an offence, and it is further declared that another punishment may be awarded in respect of the same offence, the expression "other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale set forth in section 37.

Limitation of time for trials.

40. No person, unless he is an offender who has avoided arrest or fled from justice, shall be tried or punished in pursuance of this Act for any offence committed by him unless the trial takes place within three years from the commission of the offence, or within one year after the return of the offender to British India when he has been absent from British India during that period of three years.

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CHAPTER III.

JURISDICTION AND POWERS.

41. Subject to the provisions of this Act, and, as respects Criminal Courts, subject to the law relating to criminal procedure for the time being [1] applicable to those Courts, Criminal Courts and Indian Marine Courts or both shall have jurisdiction in respect of the offences punishable under this Act as specified in the following table :— **Offences cognizable by Criminal Courts and Indian Marine Courts, respectively.**

Section of this Act.	Marginal note.	Courts having jurisdiction.
Section 5	Misconduct of commanding officer in action.	Criminal Courts and Indian Marine Courts.
" 6	Not pursuing the enemy or not assisting a friend in view.	
" 7	Delaying or discouraging action or service or deserting post or sleeping on watch.	
" 8	Misconduct of subordinate officers and men in action.	
" 9	Corresponding, etc., with the enemy .	
" 10	Improper communication with the enemy .	
" 11	Neglect of duty	Indian Marine Courts.
" 12	Mutiny accompanied by violence . .	Criminal Courts and Indian Marine Courts.
" 13	Mutiny not accompanied by violence .	
" 14	Inciting to mutiny	
" 15	Mutinous assembly or uttering seditious words.	
" 16	Concealing traitorous, mutinous or seditious practice, design or words.	
" 17	Striking or using violence to superior officer	Indian Marine Courts.
" 18	Disobedience or using threatening language to superior officer.	
" 19	Desertion	Criminal Courts and Indian Marine Courts.
" 20	Inducing any person to desert . .	
" 21	Breaking out of vessel	Indian Marine Courts.
" 22	Absence without leave	
" 23	Drunkenness on board ship or on duty .	
" 24	Cruelty or misconduct by officer . .	
" 25	Suffering vessel to be lost or imperilled .	
" 26	Unlawful taking of goods on board .	
" 27	Embezzling public stores . . .	Criminal Courts and Indian Marine Courts.
" 28	Arson	
" 29	Making false documents . . .	
" 30	Malingering or misconduct in hospital .	Indian Marine Courts.
" 31	Creating disturbance on account of complaints.	
" 32	Offences to the prejudice of good order and discipline not otherwise specified.	
" 33	Not assisting in arresting offenders .	Criminal Courts and Indian Marine Courts.
" 34	Contempt of Court	
" 35	False evidence	
" 36	Offences punishable by ordinary law .	Criminal Courts.

[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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Power to pass sentences.

42. Subject as aforesaid—

(*a*) a Criminal Court may pass a sentence of death, penal servitude, transportation or imprisonment; and

(*b*) an Indian Marine Court may pass any sentence authorized by this Act except a sentence of death, penal servitude or transportation or of imprisonment for a term exceeding two years.

Jurisdiction and powers of commanding officers.

43. (*1*) An offence triable by an Indian Marine Court and committed by a person other than a gazetted officer may, under such regulations as the Governor General in Council may make, be summarily tried and punished by the commanding officer of the offender.

(*2*) Subject to the provisions of this Act and to such restrictions as the Governor General in Council may impose, a commanding officer may pass a sentence of imprisonment for a period not exceeding three months on an offender below the position of petty officer, and may disrate any warrant officer or petty officer or any other person below that rank.

Place of trial.

44. A person subject to this Act who is accused of an offence to which this Act applies may be tried and punished for the offence by a Criminal Court in any place where he may happen to be in the same manner as if the offence had been committed in that place.

Jurisdiction over person ceasing to be subject to Act.

45. Where such an offence has been committed by any person while subject to this Act, he may be taken into custody and be tried and punished for the offence, although he has ceased to be subject to this Act, in like manner as he might have been taken into custody and tried and punished if he had continued to be so subject.

Case of person charged with an offence cognizable by a Criminal Court.

46. When a person subject to this Act is accused of an offence in respect of which a Criminal Court has jurisdiction over him under this Act or otherwise, the following rules shall apply, namely :—

(*a*) any person subject to this Act shall, on application made to him by the Court, assist in arresting and securing the accused, and the commanding officer shall, if so required by the Court, deliver the accused to the Court;

(*b*) when no requisition is made under clause (*a*), the commanding officer may, if he thinks fit, place the accused in custody with a view to delivering him up to such Criminal Court as appears to him most convenient in all the circumstances of the case.

Case of person charged with an offence cognizable by an Indian Marine

47. When a person subject to this Act is accused of an offence in respect of which an Indian Marine Court or a commanding officer has jurisdiction under this Act, and that person is within the jurisdiction of any civil, political or police officer, that officer shall, upon an application to that effect made to

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him by the commanding officer of that person or any prescribed authority, aid in the arrest of the person and deliver him when arrested into such custody as the commanding officer or the prescribed authority may require.

Court or commanding officer.

48. When an Indian Marine Court or commanding officer under this Act, and a Criminal Court under this Act or otherwise, have concurrent jurisdiction in respect of an offence, and there is a difference of opinion as to the tribunal before which the person accused of the offence should be proceeded against, either tribunal shall, on the requisition of the other, stay proceedings pending a reference to the Governor General in Council, whose order as to the tribunal before which the proceedings are to be had shall be final.

Conflict of jurisdiction.

49. An offender shall not be tried by an Indian Marine Court or by his commanding officer for any offence of which he has been convicted or acquitted by a Criminal Court or an Indian Marine Court or, in exercise of the powers conferred by section 43, by his commanding officer.

Previous conviction or acquittal.

50. Where a person liable to be tried by an Indian Marine Court under this Act is in confinement in pursuance of a sentence of a Criminal Court, the Director of Marine or other prescribed authority may make an order in the form in Schedule B to the Prisoners' Testimony Act, 1869,[1] directed to the officer in charge of the place in which the person is confined, and the provisions of that Act with respect to compliance with any order made thereunder shall, so far as they can be made applicable, apply in the case of any order made under this section.

Application of Act XV of 1869 to Indian Marine Courts.

XV of 1869.

51. The Governor General in Council may suspend, annul or modify any sentence passed by an Indian Marine Court on a commanding officer under this Act, or substitute a punishment inferior in degree for the punishment involved in any such sentence, or remit the whole or any portion of the punishment involved in any such sentence, or remit the whole or any portion of any punishment into which the punishment involved in any such sentence has been commuted; and any sentence so modified shall, subject to the provisions of this Act, be valid, and shall be carried into execution as if it had been originally passed with such modification by the Court or officer, but so that the punishment involved in any sentence be not increased by any such modification.

Powers of Governor General in Council in respect of sentences.

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 103.

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CHAPTER IV.

INDIAN MARINE COURTS.

Constitution of the Court.

Power to convene Indian Marine Court.

52. (*1*) The following authorities shall have power to convene Indian Marine Courts, namely:—

(*a*) the Governor General in Council;

(*b*) the Director of Marine;

(*c*) an officer empowered in that behalf by warrant of the Governor General in Council:

Provided that an Indian Marine Court assembled for the trial of a gazetted officer shall be convened only by, or with the previous sanction of, the Governor General in Council.

(*2*) When a ship or ships is or are detached on separate service, and when immediate example is necessary, and without detriment to the public service reference cannot be made to superior authority, the officer in command of the ship or ships may, without warrant, convene an Indian Marine Court for the trial of any person under his command being subject to this Act and below the rank of a gazetted officer.

Composition of Indian Marine Court.

53. (*1*) An Indian Marine Court shall consist of a president and not less than two or more than four other members of rank not inferior to that of first grade officer as may be ordered by the convening authority:

Provided that an Indian Marine Court convened under section 52, sub-section (*2*), may be composed of the officer convening the same as president and the two graded officers next in seniority available for the duty.

(*2*) The president of an Indian Marine Court for the trial of a commander shall always be a commander, and two at least of the other officers composing the Court shall be commanders.

(*3*) The president of an Indian Marine Court for the trial of any person below the grade of commander, except an Indian Marine Court convened under section 52, sub-section (*2*), shall be a commander.

(*4*) A person acting as prosecutor shall not be a member of the Court.

(*5*) An officer convening an Indian Marine Court shall not sit thereon except as permitted by the proviso to sub-section (*1*).

(*6*) The president and the other members of every Indian Marine Court shall be named by the authority convening the same.

(*7*) When an Indian Marine Court, after the commencement of the trial is reduced to a less number than three members, it shall be deemed to be dissolved.

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(*8*) In the case of the death or unavoidable absence of the president of an Indian Marine Court, the next senior member of the Court, if qualified under sub-section (*2*) or sub-section (*3*), as the case may be, shall take the place of the president without special appointment as such.

(*9*) If such next senior member is not qualified as aforesaid, the Court shall be deemed to be dissolved.

Procedure at the Trial.

54. An Indian Marine Court shall be held on board one of Her Majesty's Indian Marine vessels or on land. Place of sitting of Indian Marine Court.

55. As soon as an Indian Marine Court is assembled, the names of the members of the Court shall be read over to the prisoner, who shall be asked if he objects to being tried by any of them; if the prisoner objects to any member, the objection shall be decided by the Court; if the objection is allowed, the place of the member objected to shall be filled up by the officer next in seniority available for the duty who is not on the Court, subject to the regulations contained in section 53, sub-sections (*2*), (*3*), (*4*) and (*5*): Challenge.

Provided that where the Court is composed as in the proviso to section 53, sub-section (*1*), and no officer qualified under that section is available to take the place of the officer objected to, the Court shall, after recording the objection, proceed with the trial in like manner as if the objection had been disallowed.

56. (*1*) Before an Indian Marine Court proceeds to try a prisoner, an oath shall be made by every member of the Court in the prescribed manner. Oaths.

(*2*) An oath shall be made in the prescribed manner by any person who gives evidence or acts as an interpreter before an Indian Marine Court.

57. When no specific charge is made against any person subject to this Act for, or in respect or in consequence of, the wreck, loss, destruction or capture of any vessel in the Indian Marine Service, all the officers and crew of the vessel may, if the authority convening the Court thinks fit, be tried together before one and the same Indian Marine Court; and any of them, when upon his trial, may be called upon to give evidence on oath touching any of the matters then under inquiry, but no person shall be obliged to give any evidence which may tend to criminate himself. Trial of officers and crew by one Court.

58. (*1*) If by reason of the illness of the prisoner before the finding it is impossible to continue the trial, an Indian Marine Court shall be deemed to be dissolved: Dissolution of Court on illness of prisoner.

Provided that, where more prisoners than one are being tried and the trial of only one or some of them is rendered impossible by illness, the Court may,

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if it sees fit, continue the trial of the other or others, and, where the Court so continues the trial, it shall be deemed to have been dissolved only with respect to the prisoner or prisoners whose illness caused the continuance of his or their trial to be impossible.

(*2*) When the illness with which a prisoner is affected is insanity, the Court shall proceed, as nearly as circumstances admit, in the same manner as a Magistrate or Court may proceed, under section 466 of the Code of Criminal Procedure, 1882,[1] when an accused person is found to be of unsound mind and incapable of making his defence. X of 1882.

Re-trial of prisoner after dissolution of Court.

59. Subject to the provisions of the last foregoing section, where an Indian Marine Court is dissolved under that section or section 53, sub-section (*7*) or sub-section (*9*), the proceedings are null and void, and the prisoner may be tried before another Indian Marine Court on the same charge or charges.

Clearing of Court.

60. The president may, on any deliberation among the members, cause an Indian Marine Court to be cleared of all other persons.

Decision of Court.

61. Every decision of an Indian Marine Court shall be passed by a majority of votes, and where there is an equality of votes the president shall have a second or casting vote:

Provided that if there is an equality of votes on the finding the decision shall be in favour of the prisoner.

Summoning witnesses.

62. (*1*) Every person who may be required to give evidence or to produce a document before an Indian Marine Court shall be summoned in the prescribed manner.

(*2*) A summons issued under this section may be sent to any officer exercising magisterial powers within whose jurisdiction the person summoned may be or resides, and the officer shall give effect to the summons as if the witness were required to attend in his Court.

Summary punishment of certain contempts.

63. When a person subject to this Act who, being duly summoned or ordered to attend as a witness before an Indian Marine Court, behaves with contempt to the Court, the Court, if it thinks fit, instead of reserving him for trial by another Court for an offence under section 34, may, by order under the hand of the president, sentence him to imprisonment for a term which may extend to one month.

Confirmation of Findings and Sentences.

Submission of proceed-

64. (*1*) The president of an Indian Marine Court shall date and sign the

[1] *See* now the same section of the Code of Criminal Procedure, 1898 (Act V of 1898).

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proceedings of the Court and submit them, as soon as possible after their completion, to the confirming authority. ings to confirming authority.

(2) If the Court has made a recommendation to mercy, the recommendation shall be recorded and submitted to the confirming authority as part of the proceedings.

65. A finding or sentence of an Indian Marine Court shall not be valid except in so far as it may be confirmed by the confirming authority. Confirmation of findings and sentences.

66. (1) The confirming authority shall ordinarily be the authority convening the Court. Confirming authority.

(2) But if the Court was convened for the trial of a gazetted officer with the previous sanction of the Governor General in Council, or if, in the case of a Court convened for the trial of any other person subject to this Act, the Governor General in Council is of opinion that the authority convening the Court cannot act, or cannot conveniently act, as the confirming authority, the confirming authority shall be the Governor General in Council.

(3) The fact that the Governor General in Council has acted as the confirming authority with respect to any finding or sentence shall be conclusive proof that he was the proper confirming authority with respect thereto.

67. (1) The confirming authority may send back the finding and sentence of an Indian Marine Court, or either of them, for revision; and, on the finding or sentence being sent back, the Court may, if so directed by the confirming authority, receive additional evidence. Powers of confirming authority.

(2) Where the finding only is sent back for revision, the Court may revise the sentence also.

(3) The confirming authority may, in confirming the sentence of an Indian Marine Court,—

(a) reduce the punishment thereby awarded, or commute that punishment to any other punishment of inferior degree to which the offender might have been sentenced by the Court;

(b) suspend for such time as seems expedient the execution of the sentence;

(c) if the finding or sentence is informally expressed, vary the form thereof, or, if the sentence is invalid, substitute a valid sentence therefor.

(4) Notwithstanding any error, omission or irregularity in any proceeding of an Indian Marine Court, the confirming authority may confirm the finding or sentence of the Court, or either of them, unless the error, omission

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or irregularity has, in the opinion of that authority, occasioned a failure of justice.

Evidence.

Law of evidence applicable.

68. The Indian Evidence Act, 1872,[1] subject to such modifications therein as the Governor General in Council may, by notification in the Gazette of India, direct,[2] shall apply to all proceedings before Indian Marine Courts. I of 1872.

Preservation of Proceedings.

Preservation of Indian Marine Court proceedings and grant of copies.

69. (*1*) The proceedings of all Indian Marine Courts shall be preserved in the office of the Director of Marine for not less than seven years in the case of the trial of a gazetted officer, or than three years in the case of any other person.

(*2*) Any person tried by an Indian Marine Court shall be entitled, on demand at any time after the confirmation of the finding and sentence of the Court and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings a copy thereof, upon payment for the same at the prescribed rate.

Power to make Rules respecting Procedure.

Power to make rules respecting procedure.

70. (*1*) The Governor General in Council may make rules[2] to regulate the procedure of Indian Marine Courts, and for the purpose of carrying this Act into execution, so far as relates to the investigation, trial and punishment of offences triable by those Courts.

(*2*) The Governor General in Council may by any such rule confer on an Indian Marine Court any power (other than a power to try an accused person or pass a sentence) conferred on a Court of original criminal jurisdiction by the Code of Criminal Procedure, 1882.[3] X of 1882.

CHAPTER V.

SUPPLEMENTAL CRIMINAL PROVISIONS.

Procedure of Criminal Courts beyond British India.

Procedure of Criminal Courts beyond

71. The law relating to criminal procedure for the time being in force in British India shall, subject to such modifications as the Governor General in

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 222.
[2] For rules made under ss. 68 and 70 in conjunction with s. 4, to regulate the proceedings of Indian Marine Courts and certain other matters, *see* Gazette of India, 1896, Pt. I, p. 656.
[3] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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Council, by notification in the Gazette of India directs, apply to all proceedings under this Act in Criminal Courts beyond the limits of British India. British India.

Arrests.

72. The following rules shall apply to persons subject to this Act when charged with offences under this Act:— Arrest of offenders.

(1) Every such person shall be placed in custody, but no person shall be detained in custody longer than is necessary for the purposes of justice.

(2) "Custody" means, according to the usage of the service, the putting of the offender under arrest or the putting him in confinement.

(3) Any officer, or, if more officers than one are present, the senior of them, may order into custody any other person of inferior rank subject to this Act.

(4) The charge made against every person taken into custody shall, without unnecessary delay, be investigated by his commanding officer or other prescribed authority; and, as soon as may be, proceedings shall be taken for punishing the offender or discharging him from custody.

73. A commanding officer shall, upon an investigation being made into a charge against a person subject to this Act and under his command of having committed an offence under this Act, dismiss the charge if he thinks that it ought not to be proceeded with, but when he thinks the charge ought to be proceeded with, he shall, subject to the provisions of this Act, take steps without delay for bringing the offender to trial. Power of commanding officer.

Execution of Sentences of Indian Marine Courts and Commanding Officers.

74. (1) Every term of imprisonment awarded in pursuance of the sentence of an Indian Marine Court or of a commanding officer exercising jurisdiction under this Act shall, except as provided in sub-section (2), be deemed to commence on the day on which the original sentence was signed by the president of the Court or pronounced by the commanding officer. Commencement of sentences of imprisonment.

(2) When a person already undergoing a sentence of penal servitude, transportation or imprisonment is sentenced by an Indian Marine Court to imprisonment, that imprisonment shall commence at the expiration of the penal servitude, transportation or imprisonment to which he has previously been sentenced:

Provided that when, under this sub-section, at the expiration of a term of imprisonment to which a person has been sentenced by an Indian Marine Court, another term of imprisonment to which he has been similarly sentenced commences, and the aggregate term of imprisonment to which he would

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be thus liable would, as reckoned from the commencement of such imprisonment, exceed two years, so much of that term as is in excess of two years shall be deemed to be remitted.

Execution of such sentences.

75. (*1*) A person sentenced by an Indian Marine Court, or by a commanding officer exercising jurisdiction under this Act, to imprisonment shall be detained in the prescribed custody until he is transferred to a prison.

(*2*) A person sentenced as aforesaid shall, as soon as may be practicable, be transferred to a prison in British India, and shall be delivered over with a warrant of commitment in the prescribed form signed by the prescribed authority to the officer in charge of that prison.

(*3*) A person transferred to a prison under sub-section (*2*) shall thereafter be dealt with in all respects as if he were detained in that prison under a sentence of a Criminal Court:

Provided that—

(*a*) when he is a person sentenced to imprisonment by his commanding officer, the commanding officer, or the Director of Marine, may, at any time by order in writing, direct that he be discharged;

(*b*) the Director of Marine or any commanding officer may, by order in writing, direct that any person so transferred shall be delivered over to the prescribed custody for the purpose of being brought before an Indian Marine Court either as a witness or for trial or otherwise, and that he shall again be transferred to the prison.

Savings.

Saving of authority of ordinary Courts.

76. Except as expressly provided by this Act, nothing in this Act shall affect the jurisdiction or powers of any Court of criminal jurisdiction.

Minor punishments.

77. Nothing in this Act shall affect any rules, regulations, conditions or customs of the Indian Marine Service now or hereafter in force under which any person may be liable—

(*a*) to dismissal, loss of seniority, disrating, forfeiture or stoppages; or

(*b*) to any restriction not amounting to custody, or any deprivation of indulgence or additional duty, imposed in the way of discipline.

Amendment of Acts.

78. [*Amendment of Act X of 1882, section 54 (Arrest of Deserters).*] *Rep., Code of Criminal Procedure, 1898 (Act V of 1898).*

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XLV of 1860. 79. After section 138 of the Indian Penal Code[1] the following section shall be inserted, namely :— **Amendment of Chapter VII of the Penal Code (Offences relating to Army and Navy).**

"138A. The foregoing sections of this Chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen." **Application of foregoing sections to the Indian Marine Service.**

CHAPTER VI.

PROVISIONS OF CIVIL LAW.

Exemption from Process.

80. (*1*) A person below the position of gazetted officer shall not, while subject to this Act, be liable to be taken out of the Indian Marine Service by any process, execution or order of any Court of law, or otherwise, or be compelled to appear in person before any Court of law except in respect of the following matters, or one of them ; that is to say :— **Exemption from arrest for debt.**

(*a*) on account of a criminal charge or conviction ;

(*b*) on account of a decree for money, when the amount exceeds three hundred rupees over and above the costs of the suit.

(*2*) The Judge of any such Court may examine into any complaint made by any such person, or his superior officer, of the arrest of the person contrary to the provisions of this section, and may by order under his hand discharge the person, and award reasonable costs to the complainant, who may recover those costs as he might have recovered costs awarded to him by a decree against the person obtaining the process.

81. The clothes, equipment or arms of a person subject to this Act shall not be seized, nor shall the pay and allowances or any part thereof of any such person below the position of a gazetted officer be attached, in execution of any decree or order enforceable against him by any Court of Civil Judicature. **Property which cannot be attached.**

Property of Deceased Persons and Deserters.

82. The following rules are enacted respecting the disposal of the property of any person subject to this Act who dies or deserts :— **Disposal of property of deceased persons and deserters.**

(*1*) The commanding officer shall secure all the moveable property which is on the spot and cause an inventory thereof to be made.

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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(2) In the case of a deceased person, if his representative is on the spot and gives security for the payment of the ship and service debts of the deceased, the commanding officer shall deliver over the property to that representative.

(3) In the case of a deceased person, if the property is not dealt with under clause (2), and in the case of every deserter, the commanding officer shall cause the property to be sold by public auction, and from the proceeds of the sale shall pay the ship and service debts and, in the case of a deceased person, the expenses of his funeral ceremonies.

(4) The surplus, if any, shall in the case of a deceased person be paid to his representative.

(5) In the event of no claim for the surplus of a deceased person's estate being established within twelve months after his death, and immediately after the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be remitted to the Director of Marine.

(6) Property deliverable or money payable to the representative of a deceased person under this section may, if the value or amount thereof does not exceed one thousand rupees and the Director of Marine or the prescribed authority thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to the person ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative or of any creditor of a deceased person against a person to whom any such delivery or payment has been made.

(7) A person shall be deemed to have deserted within the meaning of this section who has been convicted of desertion, or who has been absent without leave for a period of thirty days from the Indian Marine Service, and has not subsequently surrendered or been arrested.

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THE ALLAHABAD UNIVERSITY ACT, 1887.

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ACT No. XVIII OF 1887.[1]

[*23rd September, 1887.*]

An Act to establish a University at Allahabad.

WHEREAS it has been determined to establish a University at Allahabad; It is hereby enacted as follows :—

Title and commencement.

1. (*1*) This Act may be called the Allahabad University Act, 1887; and

(*2*) It shall come into force at once.

Establishment and incorporation of University.

2. (*1*) A University shall be established at Allahabad, and the Governor General for the time being shall be the Patron of the University.

(*2*) The University shall consist of a Chancellor, a Vice-Chancellor and such number of Fellows as may be determined in manner hereinafter provided.

(*3*) The University shall be a body corporate by the name of the University of Allahabad, having perpetual succession and a common seal, with power to acquire and hold property, moveable or immoveable, to transfer the same, to contract, and to do all other things necessary for or incidental to the purposes of its constitution.

(*4*) The University shall come into existence on such day[2] as the Local Government may, by notification in the official Gazette, appoint in this behalf.

Chancellor.

3. The Lieutenant-Governor of the North-Western Provinces for the time being shall be the Chancellor of the University, and the first Chancellor shall be the Honourable Sir Alfred Comyns Lyall, Knight Commander of the Most Honourable Order of the Bath, Knight Commander of the Most Eminent Order of the Indian Empire.

Vice-Chancellor.

4. (*1*) The Vice-Chancellor shall be such one of the Fellows as the Chancellor may from time to time appoint in this behalf.

(*2*) Except as provided in sub-sections (*3*) and (*4*), he shall hold office for two years from the date of his appointment, and on the expiration of his term of office may be re-appointed.

(*3*) If a Vice-Chancellor leaves India he shall thereupon cease to be Vice-Chancellor unless the Chancellor otherwise directs.

(*4*) The Hon'ble Sir John Edge, Knight, Queen's Counsel, Chief Justice of the High Court of Judicature for the North-Western Provinces, shall be

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1887, Pt. V, p. 53; for Proceedings in Council, *see ibid*, Pt. VI, pp. 43, 46 and 74.

[2] The 15th November, 1887—*see* North-Western Provinces and Oudh Gazette, 1887, Pt. I, p. 465.

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deemed to have been appointed the first Vice-Chancellor, and his term of office shall, subject to the provisions of sub-section (*3*), expire on the last day of December, 1889.

Fellows.

5. (*1*) The following persons shall be Fellows, namely :—

(*a*) all persons for the time being holding such offices under the Government as the Local Government may, by notification in the official Gazette, specify in this behalf ;

(*b*) persons whom the Chancellor may from time to time appoint by name as being eminent benefactors of the University, or persons distinguished for attainments in Literature, Science or Art, or for services to the cause of education ; and

(*c*) such persons as may from time to time be elected by the Senate of the University and approved by the Chancellor :

Provided that—

(*i*) the whole number of the Fellows holding office under clauses (*a*), (*b*) and (*c*), exclusive of the Vice-Chancellor, shall not be less than thirty ; and

(*ii*) the number of persons for the time being elected and approved under clause (*c*) shall not exceed the number for the time being appointed under clause (*b*).

(*2*) A person appointed under clause (*b*), or elected and approved under clause (*c*), of sub-section (*1*) shall not, by succeeding to an office notified under clause (*a*) of that sub-section, cease to be a Fellow under clause (*b*) or clause (*c*) thereof, as the case may be.

First Fellows.

6. (*1*) The offices specified in Part I of the schedule shall be deemed to have been specified in a notification issued under section 5, sub-section (*1*), clause (*a*) ; and

(*2*) The persons named in Part II of the schedule shall, except for the purposes of the second clause of the proviso to section 5, sub-section (*1*), be deemed to be Fellows appointed under clause (*b*) of sub-section (*1*) of section 5, or elected and approved under clause (*c*) of that sub-section.

Vacation of office of Fellow.

7. (*1*) The Local Government may, by notification in the official Gazette, cancel or amend any portion of Part I of the schedule or any notification under section 5, sub-section (*1*), clause (*a*).

(*2*) The Chancellor may, with the consent of not less than two-thirds of the members of the Senate present at a meeting specially convened for the purpose, remove any Fellow appointed under clause (*b*) of sub-section (*1*) of section 5 or elected and approved under clause (*c*) of that sub-section.

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(*5*) If any Fellow leaves India without the intention of returning thereto, or is absent from India for more than four years, he shall thereupon cease to be a Fellow.

Honorary Fellows.

8. Every person who has filled the office of Patron or Chancellor shall be an honorary Fellow of the University, but shall not be a member of the Senate.

Constitution and powers of Senate.

9. (*1*) The Chancellor, Vice-Chancellor and Fellows for the time being shall form the Senate of the University.

(*2*) The Senate shall have the entire management of, and superintendence over, the affairs, concerns and property of the University, and shall provide for that management and exercise that superintendence in accordance with the rules for the time being in force under this Act.

Chairman at meetings of Senate.

10. At every meeting of the Senate the Chancellor, or, in his absence, the Vice-Chancellor, or, in the absence of both, a Fellow chosen by the Fellows present at the meeting or by a majority of them, shall preside as Chairman.

Proceedings at meetings of Senate.

11. (*1*) When a question respecting the election of any person to be a Fellow under section 5, sub-section (*1*), clause (*c*), comes before the Senate at a meeting, it shall be decided by a majority of the votes given thereat by the members in person or by proxy.

(*2*) Every other question which comes before the Senate at a meeting shall be decided by a majority of the votes of the members present.

(*3*) No question shall be decided at any such meeting unless ten members at the least, besides the Chairman, are present at the time of the decision.

(*4*) The Chairman and, subject to the foregoing provisions of this section respecting the mode of voting, every Fellow shall have one vote, and the Chairman, in case of an equality of votes, shall have a second or casting vote.

Appointment of Syndicate, Faculties, examiners and officers.

12. Subject to the rules for the time being in force under this Act, the Senate may from time to time—

(*1*) appoint, or provide for the appointment of, a Syndicate, from among the members of the Senate;

(*2*) constitute Faculties of Arts and Law and, with the previous approval of the Governor General in Council, of Science, Engineering and Medicine;

(*3*) appoint, suspend and remove, or provide for the appointment, suspension and removal of, examiners, officers and servants of the University;

(*4*) appoint, or provide for the appointment of, professors and lecturers,

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and suspend and remove, or provide for the suspension and removal of, professors and lecturers appointed by the Senate.

Functions and proceedings of Syndicate.

13. (*1*) The Syndicate shall be the executive committee of the Senate, and may discharge such functions of the Senate as it may be empowered to discharge by the rules for the time being in force under this Act.

(*2*) The Vice-Chancellor shall be a member of the Syndicate and shall preside as Chairman at every meeting of the Syndicate at which he is present.

(*3*) If the Vice-Chancellor is absent from any such meeting, the members present shall choose one of their number to be Chairman of the meeting.

(*4*) Every question at a meeting shall be decided by a majority of the votes of the members present.

(*5*) In case of an equality of votes the Chairman shall have a second or casting vote.

Power to confer degrees after examination.

14. Subject to the rules for the time being in force under this Act, the Senate may confer on persons who have passed such examinations in the University and fulfilled such other conditions as may be prescribed under this Act—

(*a*) in the Faculty of Arts, the degrees of Bachelor and Master of Arts;

(*b*) in the Faculty of Law, the degrees of Bachelor and Doctor of Laws;

and, if empowered by the Governor General in Council in this behalf,—

(*c*) in the Faculty of Science, the degrees of Bachelor and Doctor of Science;

(*d*) in the Faculty of Medicine, the degrees of Bachelor and Doctor of Medicine;

(*e*) in the Faculty of Engineering, the degrees of Bachelor and Master of Civil Engineering.

Power to confer honorary degrees.

15. If the Vice-Chancellor and not less than two-thirds of the other members of the Syndicate recommend that an honorary degree be conferred on any person, on the ground that he is, in their opinion, by reason of eminent position and attainments, a fit and proper person to receive such a degree, and their recommendation is supported by a majority of the members present at a meeting of the Senate and is confirmed by the Chancellor, the Chancellor may, on behalf of the Senate, confer on that person the degree of Doctor of Laws without requiring him to undergo any examination.

Power to levy fees.

16. (*1*) The Senate may charge such reasonable fees for entrance into the University and continuance therein, for admission to the examinations of the University, for attendance at any lectures or classes in connection with the University, and for the degrees to be conferred by the University, as may be imposed by the rules for the time being in force under this Act.

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(*2*) Such fees shall be carried to a General Fee Fund for the payment of expenses of the University.

Power to make rules.

17. (*1*) The Senate shall, as soon as may be after the coming into existence of the University, and may from time to time thereafter, make rules consistent with this Act touching—

(*a*) the mode and time of convening the meetings of the Senate and of transacting business thereat;

(*b*) the appointment, constitution and duties of the Syndicate and the Faculties, and the election of Fellows under section 5, sub-section (*1*), clause (*c*);

(*c*) the appointment, suspension, removal, duties and remuneration of examiners, officers and servants;

(*d*) the appointment, duties and remuneration of professors and lecturers, and the suspension and removal of professors and lecturers appointed by the Senate;

(*e*) the previous course of instruction to be followed by candidates for the examinations of the University;

(*f*) the examinations to be passed and the other conditions to be fulfilled by candidates for degrees; and,

(*g*) generally, all matters regarding the University.

(*2*) All such rules shall be reduced into writing and sealed with the common seal of the University, and shall,—

(*a*) in the case of the rules made under clause (*e*) or clause (*f*) of sub-section (*1*), after they have been confirmed by the Local Government and sanctioned by the Governor General in Council, and,

(*b*) in the case of all other rules, after they have been sanctioned by the Local Government,

be binding on all members of the University or persons admitted thereto and on all candidates for degrees.

(*3*) If, on the expiration of eighteen months from the date on which the University comes into existence, rules have not been made and sanctioned or, as the case may be, have not been made, confirmed and sanctioned, under the foregoing provisions of this section, touching a matter mentioned in sub-section (*1*), the Local Government may, by notification in the official Gazette, make such rules touching that matter as it thinks fit.

(*4*) Subject, in the case of rules touching any matter mentioned in clause (*e*) or clause (*f*) of sub-section (*1*), to the sanction of the Governor General in Council, rules made by the Local Government under sub-section (*3*) shall

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be deemed to have been made and sanctioned, or, as the case may be, to have been made, confirmed and sanctioned, under sub-sections (*1*) and (*2*).

Examiners, officers and servants of the Senate to be deemed to be public servants.

18. (*1*) Every examiner, officer or servant appointed or remunerated by the Senate shall, for the purposes of the Indian Penal Code, be deemed to be a public servant.

XLV of 1860.

(*2*) The word "Government" in the definition of "legal remuneration" in section 161 of that Code shall, for the purposes of sub-section (*1*), be deemed to include the Senate, and sections 162 and 163 of the Code shall be construed as if the words "or with any member of the Senate of the Allahabad University" were inserted after the words "with any Lieutenant-Governor."

Duty of Local Government to enforce Act and rules.

19. It shall be the duty of the Local Government to require that the proceedings of the University shall be in conformity with this Act and the rules for the time being in force thereunder, and the Local Government may exercise all powers necessary for giving effect to its requisitions in this behalf, and may, among other things, annul, by notification in the official Gazette, any such proceeding which is not in conformity with this Act and those rules.

Notifications in certain cases.

20. All appointments made under section 4, all appointments made and elections approved under section 5, sub-section (*1*), clauses (*b*) and (*c*), all degrees conferred under sections 14 and 15, and all rules made under section 17, shall be notified in the local official Gazette.

Annual accounts and audit thereof.

21. (*1*) The accounts of the income and expenditure of the University shall be submitted once in every year to the Local Government for such examination and audit as that Government may direct.

(*2*) For the purposes of the examination and audit the auditor appointed by the Local Government may by letter require the production before him of any books, vouchers and other documents which he deems necessary, and may require any person holding or accountable for any such books, vouchers or documents to appear before him at the examination and audit or adjournment thereof and to answer all questions which may be put to him with respect thereto or to prepare and submit any further statement which the auditor considers necessary in explanation thereof.

(*3*) Any person who in the absence of reasonable excuse, the burden of proving which shall lie upon him, refuses or neglects to comply with a requisition under sub-section (*2*) shall be punished for every such refusal or neglect with fine which may extend to one hundred rupees.

(*4*) When the auditor has completed the examination and audit he shall

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report the result thereof to the Local Government; and that Government may thereupon disallow any payment made contrary to law and surcharge it on the person making or authorizing the making of the illegal payment.

(5) If the amount of a payment so surcharged is not paid, as the Local Government directs, within fourteen days after demand being made therefor, the Secretary of State for India in Council may proceed by suit in any Court of competent jurisdiction to recover the amount from the person on whom the surcharge was made.

THE SCHEDULE.

(*See section 6.*)

PART I.

Offices to be deemed to have been specified under section 5, sub-section (*1*), clause (*a*) :—

The office of—

Bishop of Calcutta;

Chief Justice of the High Court of Judicature for the North-Western Provinces;

Chief Commissioner of the Central Provinces;

Agent to the Governor General in Rajputana;

Chief Secretary to the Government of the North-Western Provinces and Oudh;

Secretary to the Government of the North-Western Provinces and Oudh in the Public Works Department;

Commissioner of Allahabad;

Commissioner of Lucknow;

Commissioner of Agra;

Director of Public Instruction, North-Western Provinces and Oudh;

Principal of the Muir Central College, Allahabad;

Principal of the Queen's College, Benares.

PART II.

Persons to be deemed to have been appointed, or to have been elected and approved, as Fellows under section 5, sub-section (*1*), clause (*b*) or clause (*c*) :—

1. The Hon'ble James Wallace Quinton, Bachelor of Arts, Bengal Civil Service, Member of the Board of Revenue of the North-Western Provinces,

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Companion of the Most Exalted Order of the Star of India, Fellow of the Calcutta University, Additional Member of the Council of the Governor General for making Laws and Regulations, Member of the Council of the Lieutenant-Governor of the North-Western Provinces and Oudh for making Laws and Regulations.

2. The Hon'ble William Tyrrell, Bachelor of Arts, Bengal Civil Service, Judge of the High Court of Judicature for the North-Western Provinces.

3. The Hon'ble Syed Ahmed, Khan Bahadur, Companion of the Most Exalted Order of the Star of India, Fellow of the Calcutta University, Member of the Council of the Lieutenant-Governor of the North-Western Provinces and Oudh for making Laws and Regulations.

4. The Hon'ble Syed Mahmud, Barrister-at-Law, Judge of the High Court of Judicature for the North-Western Provinces.

5. The Hon'ble Pundit Ajudhya Nath, Member of the Council of the Lieutenant-Governor of the North-Western Provinces and Oudh for making Laws and Regulations.

6. Lieutenant-Colonel John Greenlaw Forbes, of the Royal Engineers, Fellow of the Calcutta University, Joint Secretary to Government, North-Western Provinces and Oudh, in the Public Works Department.

7. Surgeon-Major James Cleghorn, Doctor in Medicine, Civil Surgeon, Lucknow.

8. Rájá Shiva Prasada, Companion of the Most Exalted Order of the Star of India.

9. Mortimer Sloper Howell, Esq., Bengal Civil Service, District Judge, North-Western Provinces, Companion of the Most Eminent Order of the Indian Empire, Fellow of the Calcutta University.

10. Rájá Jai Kishan Das, Bahadur, Deputy Collector, North-Western Provinces, Companion of the Most Exalted Order of the Star of India, Fellow of the Calcutta University.

11. Rájá Udai Pratab Singh, Talukdár of Bhinga in the Bahraich District.

12. Brigade-Surgeon Emanuel Bonavia, Doctor in Medicine, Civil Surgeon, Etáwah.

13. Mahamahopadhyaya Bapu Deva Shastri, Sanskrit College, Benares, Companion of the Most Eminent Order of the Indian Empire.

14. John C. Nesfield, Esq., Master of Arts, Inspector of Schools, Oudh Division.

15. Kenneth Deighton, Esq., Bachelor of Arts, Inspector of Schools, Rohilkhand Division.

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16. William Charles Benett, Esq., Bengal Civil Service, Secretary to the Government of the North-Western Provinces and Oudh.

17. Michael J. White, Esq., Master of Arts, Principal, Canning College, Lucknow.

18. Alexander Thompson, Esq., Principal, Agra College.

19. Bábú Pramoda Das Mittra, Honorary Magistrate, Benares.

20. Charles H. Hill, Esq., Barrister-at-Law, Allahabad.

21. William H. Wright, Esq., Bachelor of Arts, Professor of English Literature, Muir Central College, Allahabad.

22. W. N. Boutflower, Esq., Bachelor of Arts, Professor of Mathematics, Muir Central College, Allahabad.

23. Shams-ul-ulama Maulavi Zaka-ulla, Khan Bahadur, *Emeritus* Professor of Arabic, Muir Central College, Allahabad.

24. Samuel Alexander Hill, Esq., Bachelor in Science, Professor of Physical Science, Muir Central College, Allahabad, and Meteorological Reporter to the Government.

25. The Reverend John Hewlett, Master of Arts, Principal, London Mission College, Benares.

26. Pandit Lakshmi Shankar Misra, Master of Arts, Professor of Physical Science, Benares College.

27. Theodore Beck, Esq., Bachelor of Arts, Principal, Muhammadan Anglo-Oriental College, Aligarh.

28. Pandit Aditya Ram Bhatacharya, Master of Arts, Professor of Sanskrit, Muir Central College, Allahabad.

29. Munshi Newal Kishore, Lucknow.

30. Bábú Bireshwar Mittra, Professor of Law, Benares College.

31. Lála Mukand Lál, Rae Bahadur, Honorary Assistant Surgeon to the Viceroy, Lecturer, Medical College, Agra.

32. Bábú Ram Saran Das, Master of Arts, Fyzabad.

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ACT No. XX OF 1887.[1]

[*21st October, 1887.*]

An Act for the Protection of Wild Birds and Game.

WHEREAS municipal authorities in different parts of British India have from time to time made rules for the protection of birds and other game;

And whereas it is expedient that Local Governments and cantonment-authorities as well as municipal authorities should be empowered to make such rules;

It is hereby enacted as follows :—

Title, extent and commencement.

1. (*1*) This Act may be called the Wild Birds Protection Act, 1887.

(*2*) It extendsto the whole of British India ; and

(*3*) It shall come into force at once.

Definitions.

2. In this Act—

(*1*) "municipal authority" means the corporation, commissioner, committee, board, council or person having authority over a municipality under any enactment for the time being in force :

(*2*) "cantonment-authority" means a cantonment-committee or, in the case of a cantonment for which such a committee has not been constituted, the commanding officer of the cantonment : and

(*3*) "wild bird" includes a peacock and every bird of game.

Power to make rules.

3. (*1*) The Local Government with respect to any municipality or cantonment within the territories under its administration, or the municipal authority or cantonment-authority of any municipality or cantonment, may from time to time make rules—

(*a*) defining the expression "wild bird" for the purposes of this Act in its application to the municipality or cantonment;

(*b*) defining for those purposes the breeding season of any kind of wild bird; and

(*c*) prohibiting, subject to such exceptions and conditions as may be prescribed by the rules, the possession or sale during its breeding

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1887, Pt. V, p. 52; for Report of the Select Committee, *see ibid*, 1887, Pt. VI, p. 130; for Proceedings in Council, *see ibid*, Pt. VI, pp. 42, 45 and 101.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467,

to British Baluchistan; *see* Gazette of India, 1892, Pt. II, p. 505; it had also previous to being declared in force there by Act XIII of 1898, been extended to Upper Burma, *see* Gazette of India, 1892, Pt. I, p. 94.

It has been declared in force in the Santhál Parganas, by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597, *see* Calcutta Gazette, 1895, Pt. I, p. 310.

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season within the municipality or cantonment of any kind of wild bird recently killed or taken, or the importation into the municipality or cantonment of the plumage of any kind of wild bird during such season.

(*2*) The authority making a rule under clause (*c*) of sub-section (*1*) may direct that a breach of it shall be punishable with fine which may extend, in the case of a first offence, to five rupees for every wild bird in respect of which or of the plumage whereof the breach of the rule has been committed, and, in the case of a subsequent offence, to ten rupees in respect of every such bird or plumage.

(*3*) A Court convicting any person of a breach of any such rule may order the confiscation of any wild bird or plumage in respect of which the breach was committed.

(*4*) The power to make rules under this section is subject to the condition of the rules being made after previous publication and, in the case of rules made by a municipal authority or cantonment-authority, to the further condition of the rules being confirmed by the Local Government before they are published in the official Gazette under clause (*5*) of section 6 of the General Clauses Act, 1887.[1] I of 1887.

Power to apply Act to any animals of game.

4. The Local Government, of its own motion or on the application of any municipal authority or cantonment-authority, may, by notification in official Gazette, declare the provisions of the last foregoing section with respect to wild birds to apply to any animals of game other than birds, and thereupon those provisions shall apply to such animals and their furs in like manner as they apply to wild birds and their plumage.

ACT No. II OF 1888.[2]

[*10th February, 1888.*]

An Act to provide for the levy of a Customs-duty on Petroleum.

WHEREAS it is expedient to provide for the levy of a custom-duty[3] on petroleum; It is hereby enacted as follows:—

1. [*Addition to Schedule II, Act XI, 1882.*] *Rep. by the Indian Tariff Act, 1894 (VIII of 1894). Sch. I.*

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[1] *See* now cl (*5*) of s. 23 of the General Clauses Act, 1897 (X of 1897), printed, General Acts, Vol. VI, Ed. 1898.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 2; for Report of the Select Committee, *see ibid*, Pt. IV, p. 6; and for Debates in Council, *see ibid*, Pt. VI, pp. 6, 21 and 35.

[3] For duty on petroleum, *see* now Art. 16, Sch. IV of the Indian Tariff Act, 1894 (VIII of 1894), printed, General Acts, Vol. VI.

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VIII of 1878. And whereas the provisos to section 37 of the Sea Customs Act, 1878,[1] do not apply to goods to which a rate of duty is not already applicable; It is further enacted as follows:—

Commencement of effect of the addition to the schedule.

2. The rate of duty applicable to petroleum of which the bill-of-entry is delivered, within the meaning of section 37 of the Sea Customs Act, 1878,[1] to the Customs-collector under section 86 of that Act, after the passing of this Act, shall be the rate of duty specified in the second schedule to the Indian Tariff Act, 1882, as amended by this Act.[2]

VIII of 1878.

XI of 1882.

ACT No. III OF 1888.[3]

[*17th February, 1888.*]

An Act to amend the Law relating to the Regulation of Police.

WHEREAS it is expedient to relax those provisions of Acts for the regulation of police which restrict the employment of police-officers to the presidency, province or place of the police-establishment of which they are members; It is hereby enacted as follows:—

Title, extent and commencement.

1. (*1*) This Act may be called the Police Act, 1888.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force at once.

Constitution of police-forces for special purposes.

2. (*1*) Notwithstanding anything in Act XXIV of 1859[4] (*an Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George*), Act V of 1861[5] (*an Act for the Regulation of Police*) [6][or the corresponding law for the time being in force in the territories administered by the Governor of Bombay in Council], or any Act relating to the police in any presidency-town, the Governor General in Council may, by notification in the Gazette of India, create a general police-district embracing

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[1] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

[2] *See* now the Indian Tariff Act, 1894 (VIII of 1894), Sch. IV (16), printed, General Acts, Vol. VI, Ed. 1898.

[3] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 130; for Report of the Select Committee, *see ibid*, 1888, Pt. IV, p. 8; and for Proceedings in Council, *see ibid*, 1887, Pt. VI, p. 100, and *ibid*, 1888, pp. 37 and 40.

The Act has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the Districts of Hazáribágh, Lohárdaga, Mánbhum and Palamau, and in Pargana Dhálbhum and the Kolhán in the Singbhum District, *see* Gazette of India, 1895, Pt. I, p. 130.

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there, by notification under s. 5 of Act XIV of 1874, *see* Gazette of India, 1892, Pt. I, p. 94.

[4] Printed, Madras Code, Ed. 1888, p. 139.

[5] Printed, General Acts, Vol. I, Ed. 1898, p. 379.

[6] These words were substituted for the words "the Bombay District Police Act, 1867," by the second schedule to the Repealing and Amending Act, 1891 (XII of 1891). *See* now the Bombay District Police Act, 1890 (Bom. Act IV of 1890), printed, Bombay Code, Vol. III, Ed. 1896, p. 488.

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parts of two or more presidencies, provinces or places, and direct the enrolment under Act V of 1861 [1] of a police-force for service therein.[2]

(*2*) With respect to such a district and the police-force enrolled therefor, the functions of the Local Government under Act V of 1861,[1] the Code of Criminal Procedure, 1882,[3] and any other enactment for the time being in force relating to police shall, subject to any orders which the Governor General in Council may make in this behalf, be discharged by the Governor General in Council, or by such Local Government or other authority as the Governor General in Council may appoint,[2] and the functions of the Inspector General of Police, Deputy Inspectors General, Assistant Inspectors General, District Superintendents of Police and Assistant District Superintendents under Act V of 1861[1] and any other enactment for the time being in force shall, subject as aforesaid, be discharged by such officer or officers as may be appointed by the authority ordinarily discharging under this sub-section the functions of the Local Government with respect to the district and force. X of 1882.

(*3*) Subject to any orders which the Governor General in Council may make in this behalf, members of a police-force enrolled for service in a general police-district created under sub-section (*1*) shall have within every part of any presidency, province or place of which any part is included in the district the powers, duties, privileges and liabilities which, as police-officers appointed under Act V of 1861,[1] they have within the district.

(*4*) Any member of such a force whom the authority ordinarily discharging with respect thereto the functions of the Local Government under sub-section (*2*) has generally or specially empowered to act under this sub-section may, subject to any orders which the Governor General in Council may make in this behalf, exercise in any part of the local area in which he has the powers of a police-officer under sub-section (*3*) any of the powers which an officer in charge of a police-station has in that part, and, when so exercising any such power, shall, subject as aforesaid, be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station.

(*5*) Subject to any orders which the Governor General in Council may make in this behalf, a part of a presidency, province or place included in a general police-district under sub-section (*1*) shall not by reason of being included therein cease for the purposes of any enactment relating to police to be part of the presidency, province or place of which it forms part.

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[1] *See* fifth footnote on preceding page.

[2] For notification issued under these powers, *see* Gazette of India, 1892, 1896 and 1898, Pt. I, pp. 44, 374 and 130, respectively.

[3] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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(*6*) For the purposes of this section, and subject to the provisions thereof, Act V of 1861[1] shall, notwithstanding anything in section 46 of that Act, be deemed to take effect throughout the whole of British India.

Employment of police-officers beyond the presidency, province or place to which they belong.

3. Notwithstanding anything in any of the Acts mentioned or referred to in the last foregoing section, but subject to any orders which the Governor General in Council may make in this behalf, a member of the police-establishment of any presidency, province or place may discharge the functions of a police-officer in any part of British India beyond the limits of the presidency, province or place, and shall, while so discharging such functions, be deemed to be a member of the police-establishment of that part and be vested with the powers, functions and privileges, and be subject to the liabilities, of a police-officer belonging to that establishment.

ACT No. IV of 1888.[2]

[*2nd March, 1888.*]

An Act to regulate Her Majesty's Indian Reserve Forces.

WHEREAS it is expedient to provide for the government, discipline and regulation of Her Majesty's Indian Reserve Forces; It is hereby enacted as follows:—

Title and commencement.

1. (*1*) This Act may be called the Indian Reserve Forces Act, 1888; and

(*2*) It shall come into force on such day as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf.[3]

Division of Reserve Forces into Active and Garrison Reserves.

2. The Indian Reserve Forces shall consist of the Active Reserve and the Garrison Reserve.

Locality of service of Reserves.

3. (*1*) A person belonging to the Active Reserve shall be liable to serve beyond the limits of British India as well as within those limits.

(*2*) A person belonging to the Garrison Reserve shall not be liable without his consent to serve beyond the limits of British India.

Power to make rules for regulation of Reserve Forces.

4. The Governor General in Council may make rules and orders for the government, discipline and regulation of the Indian Reserve Forces.

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 379.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 22; and for Proceedings in Council, *see ibid*, 1888, pp. 45 and 55.

This Act has been declared in force in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69.

[3] The Act came into force on the 26th May, 1888, *see* Gazette of India of same date, Pt. I, p. 239.

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Liability of Reserve Forces to military law.

5. Subject to the provision of section 3 with respect to persons belonging to the Garrison Reserve, and to such rules and orders as may be made under section 4, a person belonging to the Indian Reserve Forces shall, as an officer or soldier, as the case may be, be subject to military law in the same manner and to the same extent as a person belonging to Her Majesty's Indian Forces.

Punishment of certain offences by persons belonging to Reserve Forces.

6. (*1*) If a person belonging to the Indian Reserve Forces—

(*a*) when required by or in pursuance of any rule or order under this Act to attend at any place fails without reasonable excuse to attend in accordance with such requirement, or

(*b*) fails without reasonable excuse to comply with any such rule or order, or

(*c*) fraudulently obtains any pay or other sum contrary to any such rule or order,

he shall be liable—

(i) on conviction by a Court-martial, to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the Indian Articles of War[1] empowered to award, or — Act V of 1869.

(ii) on conviction by a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year.

(*2*) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

(*3*) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other.

Effect of Act on persons already in the Reserves.

7. Nothing in this Act or in any rule or order thereunder shall make any person transferred to the Indian Reserve Forces before the commencement of this Act subject, without his consent, to any of the provisions of this Act.

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[1] Printed, General Acts, Vol. II, Ed. 1898, p. 38.

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THE INVENTIONS AND DESIGNS ACT, 1888.

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ACT No. V OF 1888.[1]

[*16th March, 1888.*]

An Act to consolidate and amend the law relating to the Protection of Inventions and Designs.

WHEREAS it is expedient to consolidate and amend the law relating to the protection of inventions and designs; It is hereby enacted as follows:—

Title, extent and commencement.

1. (*1*) This Act may be called the Inventions and Designs Act, 1888.

(*2*) It shall extend to the whole of British India,[2] and

(*3*) It shall come into force on the first day of July, 1888.

Repeal.

2. (*1*) The enactments described in the first schedule are hereby repealed to the extent specified in the third column thereof.

(*2*) But this repeal of enactments shall not affect any exclusive privilege acquired, or any conditions or restrictions imposed with respect to any such privilege, or any right or liability accrued or incurred, under any of those enactments before the commencement of this Act, or any relief in respect of any such privilege, right or liability.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

Division of Act into Parts.

3. The remainder of this Act is divided into Parts, as follows:—

PART I.—INVENTIONS.

PART II.—DESIGNS.

PART I.

INVENTIONS.

Definitions.

4. In this Part, unless there is something repugnant in the subject or context,—

(*1*) "invention" includes an improvement:

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. I, p. 15; for Report of the Select Committee, *see ibid*, 1888, Pt. V, p. 3; and for Proceedings in Council, *see ibid*, 1887, Pt. VI, pp. 1 and 9, and *ibid*, 1888, Pt. VI, pp. 44 and 63.

[2] The Act has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69.

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Burma Gazette, 1888, Pt. I, p. 362, and Gazette of India, 1888, Pt. I, p. 371.

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(2) "inventor" does not include the importer into British India of a new invention unless he is the actual inventor:

(3) "applicant" means a person who has applied under this Part for leave to file a specification of an invention, whether he has filed the specification or not:

(4) "assign" includes a grantee of the exclusive privilege of making, selling or using an invention, or of authorizing others so to do, during the term for which the privilege is to continue or may be extended, or for any shorter term:

(5) "inventor," "actual inventor" and "applicant" include the executors, administrators or assigns of an inventor, actual inventor and applicant, as the case may be:

(6) "manufacture" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture:

(7) "write" includes print, lithograph, photograph, engrave, and every other mode in which words or figures can be expressed on paper or on any substance:

(8) "Secretary" means a Secretary to the Government of India appointed by the Governor General in Council to discharge the functions of the Secretary under this Act, and includes any Under Secretary, Assistant Secretary or other officer subordinate to the Government of India to the extent to which such officer may be authorised by general or special order of the Governor General in Council to discharge any of those functions:[1]

(9) "District Court" has the meaning assigned to that expression by the Code of Civil Procedure:[2] and XIV of 1882.

(10) "High Court" has the meaning assigned to that expression by the Code of Criminal Procedure, 1882,[3] in reference to proceedings against European British subjects. X of 1882.

Application for leave to file specification.

5. (1) The inventor of a new manufacture, whether he is a British subject or not, may apply to the Governor General in Council for leave to file a specification thereof.

(2) The application must be in writing signed by the applicant and in the form or to the effect of the second schedule if the inventor has not obtained a patent in the United Kingdom, and in the form or to the effect of the third schedule if he has obtained a patent in the United Kingdom.

[1] As to appointment of Secretary for purposes of the Act, *see* Gazette of India, 1893, Pt. I, p. 697.
[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.
[3] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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(*3*) It must state the name, occupation and address of the applicant, and where a patent has been obtained in the United Kingdom, the date of the patent and the date of the actual sealing thereof, and must describe with reasonable precision and detail the nature of the invention, and of the particular novelty whereof it consists, and be supplemented by such further particulars relating to the invention, and by such drawings or photographs illustrative thereof, as the Governor General in Council may see fit to require from the applicant.

(*4*) If in any case it appears to the Governor General in Council that an application ought to be further supplemented by a model of anything alleged to constitute an invention, he may require the applicant to furnish such a model neatly and substantially made of durable material and of dimensions not exceeding those, if any, specified in the requisition therefor.

Order to file specification.

6. (*1*) Upon an application under the last foregoing section the Governor General in Council may, after such inquiry as he thinks fit, make an order authorizing the applicant to file a specification of the invention.

(*2*) Before making an order under sub-section (*1*) the Governor General in Council may direct that the application be referred for inquiry and report to any person whom he thinks fit.

(*3*) When such inquiry and report are made by a person who is not in the service of the Government, there shall be payable to that person by the applicant such fee as the Governor General in Council, after considering the report, may determine.

(*4*) When an application is to be referred to such a person, the applicant shall deposit, in such place and within such time as the Governor General in Council may by rule or otherwise prescribe, such sum as will, in the opinion of the Secretary, be sufficient to defray any fee which is likely to be determined under sub-section (*3*).

(*5*) If the sum is not deposited in the place and within the time prescribed, the application may be rejected.

(*6*) If the fee as determined by the Governor General in Council exceeds the sum so deposited, an order shall not be made under sub-section (*1*) until the applicant has paid the balance of the fee.

(*7*) If the sum deposited exceeds the fee so determined, the excess shall be refunded to the applicant.

Applications in respect of contemporaneous inventions.

7. (*1*) If two or more inventors apply on the same day for leave to file specifications of inventions which appear to the Governor General in Council to be identical or so similar as to be practically identical, the Governor General in Council may, in his discretion, authorize both or all the applicants,

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subject to the other provisions of this Part, to file specifications of their respective inventions.

(*2*) If they apply on different days for leave to file specifications of such inventions as aforesaid, the applicant who applied on the first of the different days shall be deemed to have a preferential claim to an order authorizing the filing of his specification.

Acquisition and continuance of exclusive privilege.

8. (*1*) If within six months from the date of an order under section 6, sub-section (*1*), or within such further time, not exceeding three months, as the Governor General in Council, in his discretion, may, on cause shown to his satisfaction and on payment of the fee prescribed in that behalf in the further schedule, see fit to allow, the applicant causes a specification of his invention to be filed in manner by this Part required, and the fee prescribed in the fourth schedule in respect of the filing of the specification to be paid, the applicant shall, subject to the other provisions of this Part, be entitled to the exclusive privilege of making, selling and using the invention in British India, and of authorizing others so to do, for a term of fourteen years from the date of the filing of the specification.

(*2*) But an exclusive privilege in respect of an invention of a new manufacture shall, notwithstanding anything in sub-section (*1*), cease if the inventor fails to pay, within the time limited in that behalf by the fourth schedule, any fee prescribed in that schedule in respect of the continuance of the privilege.

(*3*) If, nevertheless, in any case, by accident, mistake or inadvertence, an inventor fails to pay any such fee within the time so limited, he may apply to the Governor General in Council for an enlargement of the time for making the payment.

(*4*) Thereupon the Governor General in Council may enlarge the time accordingly, on payment of the fee prescribed in that behalf in the fourth schedule and subject to the following conditions, namely :—

(*a*) the time for making a payment shall not in any case be enlarged for more than three months ; and

(*b*) if any suit is instituted in respect of an infringement of the exclusive privilege committed after a failure to make a payment within the time limited for the making thereof and before the enlargement of that time, the Court disposing of the suit may, if it thinks fit, refuse to award or give any damages in respect of the infringement.

Form and

9. (*1*) A specification filed under this Part must be in writing signed b

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the applicant, and must set forth the precise invention in respect of which the applicant claims to become entitled to an exclusive privilege. contents of specification.

(*2*) If the specification is of an invention which is an improvement only, it must by explicit language distinguish between what is old and what is claimed to be new.

(*3*) Every specification must explain the principle of the invention set forth therein and the best mode in which the applicant has contemplated applying that principle, and must describe the manner of making and using the invention in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which the invention appertains, or with which it is most closely connected, to make or use the same.

10. Every application for leave to file a specification, and every specification filed under this Part, must be left with, or sent by post to, the Secretary and the date of the delivery or receipt thereof shall be endorsed thereon and recorded in his office. Mode of filing application and specification.

11. (*1*) At the time of delivering or sending the specification for the purpose of its being filed, the applicant shall cause to be delivered or sent therewith to the Secretary as many copies thereof, not being fewer than four, as may be required by the rules for the time being in force under this Part.[1] Delivery and distribution of copies of specification.

(*2*) One of these copies shall be retained by the Secretary, and one shall be sent to the Governor of Fort St. George in Council, one to the Governor of Bombay in Council, one to the Chief Commissioner of Burma, and the others, if any, to such authorities as the Governor General in Council may appoint in this behalf.

(*3*) The copies of the specification which are sent under sub-section (*2*) to the authorities mentioned or referred to in that sub-section shall be open to the inspection of any person at all reasonable times at places to be appointed by those authorities.

12. (*1*) A book, to be called the register of inventions, shall be kept in the office of he Secretary wherein shall be entered and recorded every application for leave to file a specification, every order made on any such application, every specification filed in pursuance thereof, and every subsequent proceeding relating to the invention described therei n Register of inventions.

(*2*) Applications for leave to file a specification shall be numbered consecutively in the order in which they are delivered or received, and be dated as of the day of their delivery or receipt, and shall be entered in the register of inventions in the order of their respective numbers.

[1] As to number of spare copies of specifications to be sent by applicants, *see* Gazette of India, 1892, Pt. I, p. 82.

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(*3*) A reference shall be made in that register, in the margin of the entry of each application, to every order on or in respect of the application, to the specification, if any, filed in pursuance thereof, and to every subsequent proceeding relating to the invention which forms the subject of the application.

Address-book.

13. (*1*) Another book, to be called the address-book, shall be kept in the office of the Secretary wherein any person filing a specification under this Part or any person in whom an exclusive privilege acquired under this Part, or any share or interest therein, may become vested may from time to time cause to be stated some place in British India where notice of any rule or proceeding relating to the exclusive privilege may be served on him.

(*2*) A reference to each entry in the address-book shall be made in the register of inventions in the margin of the entry in that register of the application for leave to file the specification.

Provisions with respect to the register and book.

14. (*1*) Every entry in the register of inventions or address-book, and every document entered and recorded in the register, shall, for the purposes of the law of evidence for the time being in force,[1] be deemed to be a public document and shall be open to the inspection of any person at all reasonable times at the office of the Secretary.

(*2*) The books kept under section 11 and section 35 of Act No. XV[2] of 1859 (*an Act for granting exclusive Privileges to Inventors*) shall be deemed to be parts of the register of inventions and address-book respectively.

Extension of exclusive privilege.

15. (*1*) The inventor of a new manufacture may, at any time not more than one year and not less than six months before the time limited for the expiration of an exclusive privilege acquired under section 8, apply to the Governor General in Council for an extension of the privilege for a further term.

(*2*) When an application is made under sub-section (*1*), the Governor General in Council may, if he thinks fit, refer it to a High Court for report.

(*3*) The Court to which the application is referred shall, in making its report, have regard to the nature and merits of the invention in relation to the public, to the profits made by the inventor as such, and to all the circumstances of the case.

(*4*) The procedure on the reference shall be such as the Court thinks fit, and may include the issue of citations calling upon persons claiming to have any interest in the reference to appear before the Court on the day on which the reference is to be considered, or on any day to which the consideration thereof may be adjourned, and make with respect thereto any representation

[1] *See* the Indian Evidence Act, 1872 (I of 1872), printed, General Acts, Vol. II, Ed. 1898, p. 222.

[2] Act XV of 1859 was repealed by this Act.

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which they may see fit in relation to any of the matters to which the Court is required by the last foregoing sub-section to have regard in making its report.

(*5*) If the Governor General in Council is of opinion, or, where a reference has been made under sub-section (*2*), if the Court reports, that the inventor has been inadequately remunerated by his exclusive privilege, the Governor General in Council may, on payment of the fee prescribed in that behalf in the fourth schedule, make an order extending the term of the privilege for a further term not exceeding seven or, in exceptional cases, fourteen years from the expiration of the first term of fourteen years.

(*6*) But an exclusive privilege of which the term has been extended under the last foregoing sub-section shall, notwithstanding anything in that sub-section, cease if the inventor fails to pay before the expiration of each year of such extended term the fee prescribed in the schedule aforesaid in respect of the continuance of the privilege.

Imposition of conditions with respect to exclusive privilege.

16. An order under section 6, sub-section (*1*), authorizing the filing of a specification, or under section 15, sub-section (*5*), extending the term of an exclusive privilege, may be made subject to such conditions as the Governor General in Council thinks expedient.

Exclusive privilege to bind the Government.

17. (*1*) Subject to any conditions imposed under the last foregoing section—

(*a*) with respect to the filing, by a person employed in the service of Her Majesty in India, of the specification of a manufacture invented by him in the course of his employment, or,

(*b*) with respect to the extension, in favour of any person, of the term of an exclusive privilege,

an exclusive privilege acquired under this Part shall have to all intents the like effect as against Her Majesty as it has against a subject.

(*2*) But the officers or authorities administering any department of the service of Her Majesty may, by themselves, their agents, contractors or others, at any time after the delivery or receipt of the application for leave to file the specification of an invention, use the invention for the services of the Government on terms to be before or after the use thereof agreed on, with the approval of the Governor General in Council, between those officers or authorities and the inventor, or, in default of such agreement, on such terms as may be settled by the Governor General in Council.

Application for leave to file memorandum or amended specification.

18. (*1*) If, after the filing of the specification, the applicant has reason to believe that through mistake or inadvertence he has erroneously made any misstatement in his application or specification or included therein something which at the date of the delivery or receipt of his application was not new or

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whereof he was not the inventor, or that the specification is in any particular defective or insufficient, he may apply to the Governor General in Council for leave to file a memorandum pointing out the mis-statement or disclaiming any part of the alleged invention, or for leave to file an amended specification, as the case may be.

(*2*) The application must be in writing signed by the applicant, and must state how the error, defect or insufficiency occurred and that it was not fraudulently intended.

(*3*) Upon the application the Governor General in Council may make an order allowing the memorandum or amended specification to be filed.

(*4*) The provisions of section 6 with respect to applications, and of sections 9 and 11 with respect to specifications and copies thereof, shall apply, so far as they can be made applicable, to applications and to amended specifications, respectively, made and filed under this section.

Effect of amended specification.

19. An amended specification filed under the last foregoing section shall, except as to any suit or proceeding relating to the exclusive privilege which may be pending at the time of the filing of the amended specification, have the same effect as if it had been the specification first filed:

Provided that nothing in an amended specification shall be construed to extend or enlarge an exclusive privilege before acquired.

Bar to exclusive privilege in certain cases.

20. A person shall not be entitled to an exclusive privilege under this Part—

(*a*) if the invention is of no utility, or

(*b*) if the invention, at the date of the delivery or receipt of the application for leave to file the specification thereof, was not a new invention within the meaning of this Part, or

(*c*) if the applicant is not the inventor thereof, or

(*d*) if the original or any amended specification does not fulfil the requirements of this Part, or

(*e*) if the original or any subsequent application relating to the invention or the original or any amended specification contains a wilful or fraudulent mis-statement, or

(*f*) if the application for leave to file the specification of the invention was made under this Part after the expiration of one year from the date of the acquisition of an exclusive privilege in respect of the invention in any place beyond the limits of British India and the United Kingdom.

Novelty of invention

21. An invention shall be deemed a new invention within the meaning of this Part if it has not before the date of the delivery or receipt of the applica-

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tion for leave to file the specification thereof been publicly used in any part of British India or of the United Kingdom, or been made publicly known in any part of British India or of the United Kingdom by means of a written publication.

dependent on public use or knowledge thereof before application to file specification.

22. The public use or knowledge of an invention before the date of the delivery or receipt of the application for leave to file a specification thereof shall not be deemed a public use or knowledge within the meaning of this Part if the knowledge has been obtained surreptitiously or in fraud of the inventor or has been communicated to the public in fraud of the inventor or in breach of confidence:

Effect of public use or knowledge of invention in fraud of inventor.

Provided that the inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use, he applies for leave to file a specification.

23. Use of an invention in public by the inventor thereof, or by his servant or agent, or by any other person by his license in writing, for a period not exceeding one year immediately preceding the date of the delivery or receipt of his application for leave to file a specification thereof, or knowledge of the invention resulting from such use thereof in public, shall not be deemed a public use or knowledge within the meaning of this Part.

Effect of temporary use of invention in public by inventor or by his leave.

24. If an inventor who has obtained a patent for his invention in the United Kingdom causes an application for leave to file a specification of the invention under this Part to be delivered or received by the Secretary within twelve months from the date of the actual sealing of the patent, the invention shall be deemed a new invention within the meaning of this Part if it was not publicly used or known in any part of British India at or before the date of the application for the patent, notwithstanding that it may have been publicly used or known in some part of British India or of the United Kingdom before the date of the delivery or receipt of the application under this Part for leave to file the specification.

Effect of public use or knowledge of patented invention between application for patent and application to file specification.

25. If an inventor applies for leave to file a specification under this Part while his application for a patent is pending in the United Kingdom, and the interval between the date of his application for the patent and the date of the delivery or receipt of his application under this Part does not exceed twelve months, the invention shall not be deemed to have been publicly used, or made publicly known, within the meaning of this Part, by reason only of the invention having been used, or a description thereof having been published, in any part of British India or of the United Kingdom during the interval.

Effect of like public use or knowledge of unpatented invention.

26. If an inventor, being the exhibitor of his invention at an industrial or international exhibition, certified as such by the Governor General in Council,

Effect of use or public knowledge of

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Invention after admission to an exhibition.

causes an application for leave to file a specification of the invention to be delivered to or received by the Secretary within six months from the date of the admission of the invention into that exhibition, the invention shall not be deemed to have been publicly used, or made publicly known, within the meaning of this Part, by reason only of the invention having at any time after admission into the exhibition been publicly used or made publicly known.

Cessation of exclusive privilege by order of the Government.

27. (*1*) An exclusive privilege acquired under this Part shall cease if the Governor General in Council declares the privilege, or the mode in which it is exercised, to be mischievous to the State, or generally prejudicial to the public.

(*2*) It shall also cease if a breach of any condition on which the applicant was authorized to file a specification, or on which the term of the exclusive privilege was extended, is on an application under this Part to a High Court proved to the satisfaction of that Court, and if the Governor General in Council thereupon declares the privilege to have ceased.

Cessation of exclusive privilege on revocation or expiration of patent.

28. (*1*) An exclusive privilege acquired under this Part in respect of an invention for which a patent has been obtained in the United Kingdom shall cease on the revocation or expiration of the patent.

(*2*) Such a privilege in respect of an invention for which a patent has not been obtained in the United Kingdom shall cease on the revocation or expiration of any patent or exclusive privilege which has been obtained or acquired for or in respect of the invention in any other country.

Suit for infringement of exclusive privilege.

29. (*1*) An inventor may institute a suit in the District Court against any person who, during the continuance of an exclusive privilege acquired by him under this Part in respect of an invention, makes, sells or uses the invention without his license, or counterfeits or imitates it.

(*2*) The suit shall not be defended upon the ground of any defect or insufficiency of the specification of the invention, or upon the ground that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement, or upon the ground that the invention is of no utility:

(*3*) Nor shall it be defended upon the ground that the plaintiff was not the inventor, unless the defendant shows that he himself is the actual inventor or has obtained from the actual inventor a right to make, sell or use the invention, or to counterfeit or imitate it, as the case may be:

(*4*) Nor shall it be defended upon the ground that the invention was not new, unless the defendant, or some person through whom he claims, has, before the date of the delivery or receipt of the application for leave to file the specification, publicly or actually used in some parts of British India or of the

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United Kingdom the invention or that part of it with respect to which the exclusive privilege is alleged to have been infringed.

Application to declare exclusive privilege in respect of an invention not to have been acquired.

30. Any person may apply to a High Court for a rule to show cause why the Court should not declare that an exclusive privilege in respect of an invention to be specified in the rule has not been acquired under this Part by reason of all or any of the objections following (to be specified in the rule), that is to say :—

(*a*) that the invention is of no utility, or

(*b*) that the invention was not, at the date of the delivery or receipt of the application for leave to file the specification, a new invention within the meaning of this Part, or

(*c*) that the applicant was not the inventor thereof, or

(*d*) that the original or any amended specification does not fulfil the requirements of this Part, or

(*e*) that the applicant has knowingly or fraudulently included in the application for leave to file the specification or in the original or any amended specification, as part of his invention, something which was not new or whereof he was not the inventor, or

(*f*) that the original of any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement, or

(*g*) that some part of the invention, or the manner in which that part is to be made and used, as described in the original or any amended specification, is not thereby sufficiently described, and that this insufficiency was fraudulent and is injurious to the public.

Like application as to part of an invention.

31. Any person may apply to a High Court for a rule to show cause why the Court should not declare that an exclusive privilege in respect of any part of an invention to be specified in the rule has not been acquired under this Part, by reason of all or any of the objections following (to be specified in the rule), that is to say :—

(*a*) that that part of the invention is wholly distinct from the other parts thereof and is of no utility, or

(*b*) that that part of the invention was not, at the date of the delivery of receipt of the application for leave to file the specification, a new invention within the meaning of this Part, or

(*c*) that the applicant was not the inventor of that part of the invention, or

(*d*) that that part of the invention, or the manner in which it is to be made

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and used, is not sufficiently described in the original or any amended specification, and that this insufficiency is injurious to the public.

Security for costs of application under either of the two last foregoing sections.

32. The High Court may, irrespective of any provisions of the Code of Civil Procedure[1] in this behalf, require a person applying for a rule under either of the two last foregoing sections to give security for the payment of all costs incurred or likely to be incurred by any person appearing to show cause against the rule. XIV of 1882.

Application on breach of condition.

33. (*1*) Any person authorized by the Governor General in Council in this behalf may apply to a High Court for a rule to show cause why the question of the breach of any condition on which leave to file a specification has been granted, or any other question of fact on which the cessation of an exclusive privilege under section 27 may, in the judgment of the Governor General in Council, depend, should not be tried in the form of an issue directed by the Court.

(*2*) If the rule is made absolute, the Court, unless the breach or other matter of fact is admitted, may direct the issue to be tried and certify the result of the trial to the Governor General in Council.

Notice of proceedings to persons interested.

34. (*1*) Notice of any rule obtained or proceeding taken under section 30, section 31 or section 33 shall be served on all persons appearing from the address-book to be proprietors of the exclusive privilege, or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(*2*) The notice shall be deemed to be sufficiently served if a copy thereof is left at the place for the time being stated in the address-book, by delivering the copy to any person resident at or in charge of the place or, if there is no person resident at or in charge of the place, or if the place is not within the local limits of the jurisdiction of the Court, by causing the notice to be sen to the place by post by a registered letter directed to the person to whom the notice is addressed.

Framing issue for trial before other Court.

35. (*1*) The High Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court, or any District Court, of any question of fact arising upon an application under section 30, section 31 or section 33, and the issue shall be tried accordingly.

(*2*) If the issue is directed to another Court, the finding shall be certified by that Court to the Court directing the issue.

(*3*) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the tria shall be

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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recorded, and a copy thereof, certified by the Judge of the Court, shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court, and the High Court may thereupon act upon the finding of the District Court, or dispose of the application upon the evidence recorded, or direct a new trial, as the justice of the case may require.

Order on application.

36. (*1*) If it appears to the High Court at the hearing of an application under section 30 or section 31 that, by reason of any of the objections specified in the rule, the exclusive privilege in the invention or in any part thereof has not been acquired, the Court shall make an order accordingly, and thereupon the applicant shall, so long as the order continues in force, cease to be entitled to the exclusive privilege.

(*2*) If it appears to the High Court, at the hearing of any such application as last aforesaid, that the applicant has, in the description of his invention in the application for leave to file a specification thereof or in the original or any amended specification, erroneously included something which at the date of the delivery or receipt of the application for leave to file the specification was not new or whereof he was not the inventor, or that the specification is in any particular defective or insufficient, but that the error, defect or insufficiency was not fraudulently intended, the Court may adjudge the exclusive privilege to have been acquired and to be valid, save as to the part thereof affected by the error, defect or insufficiency: or

(*3*) If it appears to the High Court that the error, defect or insufficiency can be amended without injury to the public, the Court may adjudge the exclusive privilege in respect of the whole of the invention to be valid, and may, upon such terms as it thinks reasonable, order the specification to be amended in any particular in which it is erroneous, defective or insufficient; and thereupon the applicant shall, within a time to be limited by the Court for the purpose, file in the office of the Secretary a specification amended according to the order.

(*4*) The provisions of section 18 with respect to the distribution and disposal of copies of amended specifications, and of section 19 with respect to the effect of such specifications, shall apply, so far as they can be made applicable, to an amended specification filed under this section.

(*5*) An exclusive privilege in respect of an invention shall not be defeated upon the ground that the application for leave to file the specification of the invention contains a mis-statement, unless the mis-statement was wilful or fraudulent.

Delivery of particulars.

37. (*1*) In a suit for the infringement of an exclusive privilege acquired under this Part the plaintiff shall deliver with his plaint particulars of the

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breaches complained of in the suit, and the defendant shall deliver a written statement of the particulars of the grounds, if any, upon which he means to contend that the plaintiff is not entitled to an exclusive privilege in respect of the invention.

(2) In like manner, upon an application to a High Court under section 30, section 31 or section 33, the person making the application shall deliver particulars of the objections or grounds on which he means to rely.

(3) At the hearing of any such suit or application, or at the trial of any issue arising out of any such application, evidence shall not be allowed to be given in proof of any breach of the exclusive privilege, or of any ground impeaching the validity of that privilege, or of any objection or ground affecting such a privilege, unless such breach or other matter as aforesaid has been stated in the particulars delivered under this section.

(4) If it is alleged that the invention was publicly used or known before the date of the delivery or receipt of the application for leave to file the specification thereof, the places where and the manner in which the invention was so publicly used or known shall be stated in the particulars.

(5) Notwithstanding anything in the foregoing portion of this section, the Court in which the suit or application is pending, or an issue arising out of the application is being tried, may allow the plaintiff or defendant respectively to amend the particulars delivered under this section upon such terms as it thinks fit.

Title of actual inventor to exclusive privilege in case of fraud.

38. If, in a suit instituted in the District Court at any time within fourteen years from the date of the filing of a specification of an invention under this Part, the actual inventor proves to the satisfaction of the Court that the applicant was not the actual inventor, and that at the time of the application for leave to file the specification the applicant knew or had reason to believe that the knowledge of the invention was obtained by himself or by some other person surreptitiously or in fraud of the actual inventor, or by means of a communication made in confidence by the actual inventor to him or to any person through whom he derived the knowledge, the Court may make a decree declaring an exclusive privilege in respect of the invention to be vested, subject to other provisions of this Part, in the actual inventor for a term of fourteen years from the date on which the specification was filed, and requiring the applicant to account for and pay over to the actual inventor the profits derived by him from the invention or so much of those profits as the Court, having regard to the degree of diligence exerted by the actual inventor in proceeding under this section and to all the other circumstances of the case, may see fit to require the applicant to pay.

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39. A Court making a decree in a suit under section 29 or section 38, or an order on an application under section 30, section 31 or section 33, shall send a copy of the decree or order, as the case may be, to the Secretary, who shall cause an entry thereof and reference thereto to be made in the register of inventions and against any entry in the address-book affected thereby.

Transmission of copies of decrees and orders to Secretary.

40. In the following cases, namely:—

Registration of cessation of exclusive privilege.

(*a*) when an exclusive privilege acquired under this Part has ceased under section 8 or section 15 by reason of a fee in respect of the continuance of the privilege not having been paid within the time limited by the fourth schedule for the payment thereof, and the period, if any, within which an order might have been made for enlarging the time for the making of the payment has expired;

(*b*) when an exclusive privilege acquired under this Part has been declared by the Governor General in Council under section 27 to have ceased;

(*c*) when an exclusive privilege acquired under this Part has ceased under section 28 by reason of the revocation or expiration of a patent or exclusive privilege;

(*d*) when the whole or any part of an exclusive privilege acquired under this Part has ceased under section 36 in consequence of an order under that section;

(*e*) when an exclusive privilege has been declared by a decree to have vested in an actual inventor under section 38;

(*f*) when an exclusive privilege acquired under this Part has ceased by reason of the expiration of the term for which it was acquired;

the Secretary shall cause an entry with respect to the cessation or vesting of the exclusive privilege to be made in the register of inventions, and a reference to that entry to be made in the margin of the entry in that register of the application for leave to file the specification of the invention.

41. (*1*) If any person is aggrieved by an entry in the register of inventions or address-book, or by the omission of an entry therefrom, and a proceeding is not provided in the foregoing portion of this Part whereby the register or book may be rectified, he may apply to a High Court for an order for the rectification of the register or book, and the Court may make such order on the application as it thinks fit.

Rectification of register of inventions or address-book.

(*2*) A copy of the order shall be forwarded by the Court to the Secretary, who shall cause an entry thereof and reference thereto to be made in the register of inventions and against any entry in the address-book affected thereby.

(*3*) When the Secretary is a party to an application under this section, the

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costs of another party thereto shall not be adjudged to be payable by the Secretary.

Power to High Court to stay proceedings on or dismiss certain applications.

42. A High Court to which an application has been made under section 30, section 31, section 33 or section 41 may stay proceedings on, or dismiss, the application if in its opinion the application would be disposed of more justly or conveniently by another High Court.

Power for Governor General in Council to require grant of licenses.

43. If on the petition of any person interested it is proved to the Governor General in Council that, by reason of an inventor who has acquired an exclusive privilege under this Part failing to grant licenses on reasonable terms,—

(*a*) the exclusive privilege is not being worked in British India, or

(*b*) the reasonable requirements of the public with respect to the invention cannot be supplied, or

(*c*) any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Governor General in Council may order the inventor to grant, or may himself on behalf of the inventor grant, licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Governor General in Council, having regard to the nature of the invention and the circumstances of the case, may deem just.

Assignment for particular places.

44. Any person for the time being entitled to an exclusive privilege under this Part, or to any share or interest in such a privilege, in any local area may, subject to the conditions of his title thereto, assign the privilege or such share or interest, as the case may be, for any place in or part of that local area.

Subscription of specifications and applications.

45. If an applicant is absent from British India, an application for leave to file a specification, or a specification, or an application for leave to file a memorandum or amended specification, may, instead of being signed by the applicant under section 5, section 9 or section 18, as the case may be, be signed on behalf of the applicant by an agent in British India authorized by him in writing in that behalf.

Verification of applications.

46. (*1*) An application under this Part for leave to file a specification, memorandum or amended specification must be verified by the person making the application.

(*2*) If that person is absent from British India, the application may be verified by the agent who signs the application on his behalf.

(*3*) The verification must be signed by the person making it, and must be to the effect that the facts stated in the application are true to his knowledge

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except as to matters stated on information and belief, and that as to those matters he believes them to be true.

Agents.

47. Subject to the provisions of the two last foregoing sections and of any other enactment for the time being in force, any act which is required or authorized by this Part to be done by any person may be done on his behalf by an agent in British India having authority in writing from that person so to do the act.

Fees.

48. (*1*) There shall be paid in respect of the several proceedings specified in the fourth schedule the fees in that schedule prescribed.

(*2*) The Governor General in Council may, if he thinks fit, reduce any of those fees and revoke or vary the reduction.

(*3*) The fees payable under this section shall be collected by means of stamps or otherwise as the Governor General in Council directs.[1]

(*4*) A proceeding in respect of which a fee is payable under the fourth schedule shall be of no effect unless the fee has been paid.

Rules and forms.

49. (*1*) The Governor General in Council may make such rules and prescribe such forms as he thinks necessary for carrying out the purposes of this Part,[2] and may alter or amend[3] either of the forms in the second and third schedules.

(*2*) Rules under this section may provide, among other matters, for the printing of specifications, memoranda and amended specifications, and for the distribution or sale of printed copies thereof.

PART II.

Designs.

Definitions.

50. In this Part unless there is something repugnant in the subject or context,—

(*1*) "design" means some peculiar shape, configuration or form given to an article, or arrangement of lines or the like used on or with an article, but not the article itself:

(*2*) "copyright" means the exclusive right to apply a design to an article:

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[1] For notification as to manner of collecting fees payable under the Act, *see* Gazette of India, 1889, Pt. I, p. 182.

[2] For rules as to the manner of dealing with applications under the Act, *see* Gazette of India, 1898, Pt. I, p. 99.

For rules as to the preparation of applications and specifications filed under ss. 5, 8 and 51, and of drawings attached to such applications or specifications, *see* Gazette of India, 1895, Pt. I, p. 854.

[3] For notification amending the form of application in the second schedule to the Act, *see* Gazette of India, 1892, Pt. I, p. 143.

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(*3*) the author of any new and original design shall be considered the "proprietor" thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case that person shall be considered the "proprietor," and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to an article, either exclusively of any other person or otherwise, and also every person on whom the property in the design or the right to the application thereof shall devolve, shall be considered the "proprietor" of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise: and

(*4*) "Secretary," "District Court" and "High Court" have the same meanings as in Part I.

Application for order for registration of design.

51. (*1*) Any person, whether a British subject or not, claiming to be the proprietor of any new and original design not previously published in British India, may apply to the Governor General in Council for an order for the registration of the design.

(*2*) The application must be in writing in the form or to the effect of the fifth schedule, and must contain a statement of the nature of the design and be accompanied by as many copies of drawings, photographs or tracings thereof, not being fewer than four, as may be required by the rules for the time being in force under this Part.

(*3*) It must be left with, or sent by post to, the Secretary, and the date of the delivery or receipt thereof in the office of the Secretary shall be endorsed thereon and recorded in that office.

Registration in register of designs.

52. (*1*) Upon the application the Governor General in Council may, after such inquiry as he thinks fit, make an order authorizing the registration of the design.

(*2*) When an order has been made under sub-section (*1*), the Secretary shall cause the design to be registered in a book to be kept by him for the purpose and to be called the register of designs.

(*3*) The date of registration shall be recorded in the register.

Acquisition of copyright.

53. When a design is registered, the proprietor thereof shall, subject to the other provisions of this Part, have copyright in the design during five years from the date of registration.

Marking registered designs.

54. (*1*) Before delivery on sale of any article to which a registered design has been applied, the proprietor of the design shall cause the article to be marked with the word "registered" either in full or in an abbreviated form.

(*2*) If he fails to cause the article to be so marked, the copyright in the

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design shall cease unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Effect of exhibiting unregistered designs at exhibitions.

55. If the proprietor of a design exhibited at an industrial or international exhibition, certified as such by the Governor General in Council, causes an application for an order for the registration of the design to be delivered to or received by the Secretary within six months from the date of the admission of the design into that exhibition, the design shall not be deemed not to be a new and original design not previously published in British India within the meaning of section 51 by reason only of the design having been exhibited at the exhibition.

Mutation of names in register of designs.

56. Any person in whom the copyright in a design has become vested may apply to the Secretary for the entry of his name in the register of designs as proprietor of the copyright, and the Secretary may, if he sees fit, cause the entry to be made.

Suit for infringement of copyright.

57. (*1*) The registered proprietor of a design may institute a suit in the District Court for the recovery of any damages arising from the application by any person to any article of the design or of any fraudulent or obvious imitation thereof for the purpose of sale, or from the publication, sale or exposure for sale by any person of any article to which the design, or any fraudulent or obvious imitation thereof, has been applied, that person knowing or having reason to believe that the proprietor had not given his consent to such application.

(*2*) When the Court makes a decree in a suit under this section, it shall send a copy of the decree to the Secretary, who shall cause an entry thereof to be made in the register of designs.

Registration of cessation of copyright.

58. When, from the expiration of the term of a copyright or from any other cause, the copyright in a design has ceased, the Secretary shall cause an entry with respect to the cessation of the right to be made in the register of designs.

Rectification of register of designs.

59. (*1*) A High Court may, on the application of any person aggrieved by an entry in the register of designs, or by the omission of an entry therefrom, make such order for the rectification of the register as it thinks fit.

(*2*) An order under sub-section (*1*) may declare copyright in a design not to have been acquired.

(*3*) A copy of the order shall be forwarded by the Court to the Secretary who shall cause an entry thereof to be made in the register of designs.

(*4*) When the Secretary is a party to an application under this section, the costs of another party thereto shall not be adjudged to be payable by the Secretary.

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Power to High Court to stay proceedings on, or dismiss, application for rectification of register.

60. A High Court to which an application has been made under the last foregoing section may stay proceedings on, or dismiss, the application if, in its opinion, the application would be disposed of more justly or conveniently by another High Court.

Application to this Part of certain provisions of Part I.

61. The provisions of the following Part I, namely:—

(*a*) section 11, with respect to copies of specifications,

(*b*) section 14, with respect to the register of inventions and the matters entered therein, and

(*c*) section 47, with respect to the performance by an agent of any act required or authorized by that Part to be done by a principal,

shall, so far as they can be made applicable, apply, respectively, to—

(*a*) copies of drawings, photographs or tracings accompanying an application for an order for the registration of a design in respect of which such an order has been made,

(*b*) the register of designs and the matters entered and documents referred to therein, and

(*c*) the performance by an agent of any act required or authorized by this Part to be done by a principal.

Fees.

62. (*1*) There shall be paid in respect of the several proceedings specified in the sixth schedule the fees in that schedule prescribed.

(*2*) The Governor General in Council may, if he thinks fit, reduce any of those fees and revoke or vary the reduction.[1]

(*3*) The fees payable under this section shall be collected by means of stamps or otherwise as the Governor General in Council may direct.

(*4*) A proceeding in respect of which a fee is payable under the sixth schedule shall be of no effect unless the fee has been paid.

Rules and forms.

63. The Governor General in Council may make such rules and prescribe such forms as he thinks necessary for carrying out the purposes of this Part, and may alter or amend the form in the fifth schedule.[2]

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[1] As to notification issued under this sub-section, in conjunction with s. 48 (*5*), *see* Gazette of India, 1898, Pt. i, p. 143.

[2] As to rules made under the power conferred by this section in conjunction with s. 49, *see* Gazette of India, 1898, Pt. I, p. 854.

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(The First Schedule.—Enactments repealed. The Second Schedule.—Application where Patent has not been obtained.)

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and year.	Subject or title.	Extent of Repeal.
XV of 1859 . .	For granting exclusive Privileges to Inventors.	So much as has not been repealed.
XIII of 1872 . .	Patterns and Designs Protection Act, 1872 .	So much as has not been repealed.
XVI of 1883 . .	Protection of Inventions Act, 1883 . .	The whole.
I of 1879 . . .	Indian Stamp Act, 1879	Article 48, Schedule I.

THE SECOND SCHEDULE.

APPLICATION WHERE PATENT HAS NOT BEEN OBTAINED.

(*See sections 5 and 49.*)

TO THE GOVERNOR GENERAL IN COUNCIL.

The application of (*here insert name, occupation and address*) for leave to file a specification under Part I of the Inventions and Designs Act, 1888.

1. The applicant is in possession of an invention for (*state the title of the invention*); he is the inventor thereof (*or, as the case may be, the executor, administrator or assign of the inventor*); and, to the best of his information and belief, the invention is new within the meaning of Part I of the Inventions and Designs Act, 1888, and no circumstance exists which, if the applicant is authorized to file a specification and files it in accordance with that Part, will disentitle him to an exclusive privilege thereunder in respect of the invention.

2. The following is a description of the invention (*here describe it and the particular novelty whereof it consists*).

3. The applicant therefore applies for leave to file a specification of the invention pursuant to Part I of the Inventions and Designs Act, 1888.

(*Signature and verification.*)

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THE THIRD SCHEDULE.

APPLICATION WHERE PATENT HAS BEEN OBTAINED.

(*See sections 5 and 49.*)

TO THE GOVERNOR GENERAL IN COUNCIL.

The application of (*here insert name, occupation and address*) for leave to file a specification under Part I of the Inventions and Designs Act, 1888.

1. The applicant (*or, as the case may be, A.B. of whom the applicant is the executor, administrator or assign*) has obtained a patent in the United Kingdom, dated and sealed as of the day of , and actually sealed on the day of , for (*state the title of the invention*).

2. To the best of the information and belief of the applicant, the invention is new within the meaning of Part I of the Inventions and Designs Act, 1888, and no circumstance exists which, if the applicant is authorized to file a specification and files it in accordance with that Part, will disentitle him to an exclusive privilege thereunder in respect of the invention.

3. The following is a description of the invention (*here describe it and the particular novelty whereof it consists*).

4. The applicant therefore applies for leave to file a specification of the invention pursuant to Part I of the Inventions and Designs Act, 1888.

(*Signature and verification.*)

THE FOURTH SCHEDULE.

FEES (*Inventions*).

(*See sections 8, 15 and 48.*)

	Rs.	A.	P.
(1) in respect of an application for leave to file a specification (section 5) .	10	0	0
(2) in respect of the filing of a specification (section 8)	30	0	0
(3) in respect of an extension of the time for filing a specification (section 8)	20	0	0
(4) in respect of the continuance of an exclusive privilege (section 8)—			
(a) after the filing of the specification and before the expiration of the fourth year from the date of the filing thereof . . .	50	0	0
(b) after the expiration of the fourth year and before the expiration of the fifth year from that date	50	0	0
(c) after the expiration of the fifth year and before the expiration of the sixth year from that date	50	0	0
(d) after the expiration of the sixth year and before the expiration of the seventh year from that date	50	0	0

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THE FOURTH SCHEDULE—*continued.*

	Rs.	A.	P.
(*e*) after the expiration of the seventh year and before the expiration of the eighth year from that date	50	0	0
(*f*) after the expiration of the eighth year and before the expiration of the ninth year from that date	100	0	0
(*g*) after the expiration of the ninth year and before the expiration of the tenth year from that date	100	0	0
(*h*) after the expiration of the tenth year and before the expiration of the eleventh year from that date	100	0	0
(*i*) after the expiration of the eleventh year and before the expiration of the twelfth year from that date	100	0	0
(*j*) after the expiration of the twelfth year and before the expiration of the thirteenth year from that date	100	0	0
Provided that the inventor may pay the sum total of the said fees in respect of the continuance of the exclusive privilege, or any part thereof short of the sum total, at any time before the same falls due.			
(*5*) in respect of an enlargement of the time for payment of a fee under article (4) of this schedule (section 8)—			
(*i*) if the enlargement does not exceed one month	10	0	0
(*ii*) if the enlargement exceeds one month, but does not exceed two months	25	0	0
(*iii*) if the enlargement exceeds two months	50	0	0
(*6*) in respect of an application for an extension of an exclusive privilege for a further term (section 15)	50	0	0
(*7*) in respect of an order extending the term of an exclusive privilege (section 15)	100	0	0
(*8*) in respect of the continuance of an exclusive privilege of which the term has been extended (section 15)	100	0	0
	to be paid before the expiration of each year of the extended term:		
Provided that the inventor may pay the sum total of the said fees in respect of the continuance of the exclusive privilege, or any part thereof short of the sum total, at any time before the same falls due.			
(*9*) in respect of an application for leave to file a memorandum or amended specification (section 18)	20	0	0
(*10*) in respect of a petition to the Governor General in Council for a compulsory license (section 48)	50	0	0
(*11*) for the inspection of any book or other document which is open to inspection under Part I	1	0	0
(*12*) for copies—			
(*a*) when the number of words copied does not exceed four hundred	1	0	0

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THE FOURTH SCHEDULE—*concluded.*

	Rs.	A.	P.
(*b*) for every hundred words in excess of four hundred	0	4	0
(*c*) of drawings or photographs	cost according to agreement.		
(*13*) for certifying copies— for every hundred words	0	2	0

THE FIFTH SCHEDULE.

Application for Order for Registration of Design.

(*See sections 51 and 63.*)

The application of (*here insert name, occupation and address*) for an order for the registration of a design under Part II of the Inventions and Designs Act, 1888.

1. The applicant claims to be the proprietor of the design of which the nature is hereinafter stated.

2. To the best of his information and belief, that design is, within the meaning of Part II of the Inventions and Designs Act, 1888, a new and original design not previously published in British India.

3. copies of (*drawings*), (*photographs*), (*tracings*) of the design accompany this application.

4. The following is a statement of the nature of the design (*here describe its nature*).

5. The applicant therefore applies for an order for the registration of the design pursuant to Part II of the Inventions and Designs Act, 1888.

(*Signature.*)

THE SIXTH SCHEDULE.

Fees (*Designs*).

(*See section 62.*)

	Rs.	A.	P.
(*1*) in respect of an application for an order for the registration of a design (section 51)	10	0	0
(*2*) in respect of a mutation of names in the register of designs (section 56)	5	0	0
(*3*) for the inspection of any book or other document which is open to inspection under Part II	1	0	0
(*4*) for copies—			
(*a*) when the number of words copied does not exceed four hundred	1	0	0
(*b*) for every hundred words in excess of four hundred	0	4	0
(*c*) of drawings, photographs or tracings	cost according to agreement.		
(*5*) for certifying copies— for every hundred words	0	2	0

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ACT No. VI OF 1888.[1]

[*23rd March, 1888.*]

An Act to amend the law relating to Imprisonment for Debt.

WHEREAS it is expedient to amend the law relating to imprisonment for debt; It is hereby enacted as follows:—

Title, commencement and extent.

1. (*1*) This Act may be called the Debtors Act, 1888; and

(*2*) It shall come into force at once.

(*3*) The several portions thereof have the same local extent as the enactments to which they respectively relate.

XIV of 1882.

Addition of sections after section 245 of the Code of Civil Procedure.

2. After section 245 of the Code of Civil Procedure[2] the following sections shall be inserted, namely:—

Prohibition of arrest or imprisonment of women in execution of decrees for money.

"245A. Notwithstanding anything in the last foregoing section or in any other section of this Code, the Court shall not order the arrest or imprisonment of a woman in execution of a decree for money.

Discretionary power to permit other judgment-debtors to show cause against imprisonment.

"245B. (*1*) Notwithstanding anything in section 245 or in any other section of this Code, when an application is for the execution of a decree for money by the arrest and imprisonment of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to jail in execution of the decree.

"(*2*) If appearance is not made in obedience to the notice, the Court shall, if the decreeholder so requires, issue a warrant for the arrest of the judgment-debtor."

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 505; for Report of the Select Committee, *see ibid*, 1888, Pt. V, p. 24; for Debates in Council, *see ibid*, 1886, Supplement, pp. 898 and 961, and *ibid*, 1888, Pt. VI, pp. 47 and 68.

Ss. 2-8 of this Act have been declared in force in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69.

S. 10 (*1*) of the Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 869.

This Act, so far as it amends the Code of Civil Procedure (Act XIV of 1882), is in force in the whole of Upper Burma (except the Shan States), the Code having been declared in force there by the Burma Laws Act, 1898 (XIII of 1898).

The Act (except ss. 9 and 10) had been previously extended to the Town of Mandalay in Upper Burma by notification under s. 5 of Act XIV of 1874, *see* Burma Gazette, 1888, Pt. I, p. 362, and Gazette of India, 1888, Pt. I, p. 371; as being part of the Code of Civil Procedure (Act XIV of 1882), it is now in force in the Municipality of Chaibassa in the Singbhum District, *see* Gazette of India, 1896, Pt. I, p. 44; in the Porahat Estate in the same District, *see ibid*, 1897, Pt. I, p. 1059.

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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Amendment of section 250 of the Code.

3. In section 250 of the said Code, between the word "shall" and the word "issue", the following shall be inserted, namely :—

"subject to the provisions of sections 245A and 245B,".

Addition of new section after section 337 of the Code. Proceedings on appearance of judgment-debtor in obedience to notice under section 245B, or after arrest in execution of decree for money.

4. After section 337 of the said Code the following shall be inserted, namely :—

"337A. (*1*) When a judgment-debtor appears before the Court in obedience to a notice issued under section 245B, or is brought before the Court after being arrested in execution of a decree for money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms, if any, as it thinks fit, make an order disallowing the application for his arrest and imprisonment, or directing his release, as the case may be.

"(*2*) Before making an order under sub-section (*1*), the Court may take into consideration any allegation of the decreeholder touching any of the following matters, namely :—

[1](*a*) the decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account;

(*b*) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was made, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decreeholder in the execution of the decree;

(*c*) any undue or unreasonable preference given by the judgment-debtor to any of his other creditors;

(*d*) his refusal or neglect to pay the amount of the decree or some part thereof when he has or since the date of the decree has had the means of paying it;

(*e*) the likelihood of his absconding or leaving the jurisdiction of the Court with the object or effect mentioned in clause (*b*) of this sub-section.

"(*3*) While any of the matters mentioned in sub-section (*2*) are being considered, the Court may in its discretion order the judgment-debtor to be imprisoned, or leave him in the custody of an officer of the Court, or release him on his furnishing sufficient security for his appearance on the requisition of the Court.

[1] *Cf.* the Debtors Act, 1869 (32 & 33 Vict., c. 62).

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"(*4*) A judgment-debtor released under this section may be re-arrested.

"(*5*) If the Court does not make such an order as is mentioned in sub-section (*1*), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to jail."

5. To section 380 of the said Code the following shall be added, namely :— **Addition to section 380 of the Code.**

"On the application of any defendant in a suit for money in which the plaintiff is a woman the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India independent of the property in suit."

6. In section 640 of the said Code, after the words "from arrest in execution of civil process" the words "in any case in which the arrest of women is not prohibited by this Code" shall be added. **Amendment of section 640 of the Code.**

7. In section 642 of the said Code, for the words and figures "except as provided in sections 256 and 643" the following shall be substituted, namely :— **Amendment of section 642 of the Code.**

"except as provided in section 337A, sub-section (*5*), and sections 256 and 643."

8. After section 652 of the said Code, the following shall be added, namely :— **Addition of new section after section 652 of the Code.**

"653. (*1*) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued. **Release on ground of illness of judgment-debtor.**

(*2*) When a judgment-debtor has been arrested under this Code the Court may release him if in its opinion he is not in a fit state of health to undergo imprisonment.

(*3*) When a judgment-debtor has been committed to jail, he may be released therefrom—

(*a*) by the Local Government on the ground of his suffering from any infectious or contagious disease, or

(*b*) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(*4*) A judgment-debtor released under this section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed that prescribed in section 342 or section 481, as the case may be."

9. [*Repeal of part of s. 8 of the Married Woman's Property Act, 1874,*[1] *and*

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 446.

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s. 31 of the Ajmere Courts Regulation, 1871.[1]] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of parts of Madras Act VIII of 1865 and India Act XII of 1881.

10. (*1*) For the first fifty-five words of section 48 of the Act of the Governor of Fort St. George in Council, No. VIII of 1865,[2] the following shall be substituted, namely:—

"No person shall be imprisoned as a defaulter for a longer period than six months whatever the amount of the arrears may be, nor for a longer period than six weeks if the arrears do not exceed fifty rupees."

(*2*) For the proviso to section 163 of the North-Western Provinces Rent Act, 1881,[3] the following shall be substituted, namely:— XII of 1881.

"Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed six weeks when the amount decreed (exclusive of costs) does not exceed fifty rupees, or six months in any other case."

ACT No. VII OF 1888.[4]

[*23rd March, 1888.*]

An Act to amend the Code of Civil Procedure, the Indian Registration Act, 1877, and the Indian Limitation Act, 1877.

WHEREAS it is expedient to amend the Code of Civil Procedure, the XIV of 1882.

[1] Printed, Ajmere Code, Ed. 1893, p. 147.

[2] Printed, Madras Code, Ed. 1888, p. 230.

[3] For Act XII of 1881, *see* the revised edition, as modified up to 1st July, 1897, published by the Legislative Department.

[4] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 865; for the Report of the Select Committee, *see ibid*, 1888, Pt. V, p. 27; and for debates in Council, *see* Gazette of India, 1886, Supplement, pp. 1194 and 1279, and *ibid*, 1888, Pt. VI, pp. 57 and 77.

This Act (except so much thereof as amends the Indian Registration Act, 1877, and the Indian Limitation Act, 1877, which is already in force) has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to the following Scheduled Districts:—

The Districts of Darjeeling and Jalpáiguri, and the Mahál of Angul.	*See* Calcutta Gazette, 1888, Pt. I, p. 959, and Gazette of India, Pt. I, p. 524.
The Districts of Hazáribágh, Lohárdagá (including the District of Palamau, then a part of Lohárdagá) and Mánbhum, and the Pargana of Dhálbhum.	Ditto.
The Pargana Jaunsar Báwar in the Déhrá Dún District and the scheduled portion of the Mirzápur District.	*See* North-Western Provinces Gazette, 1888, Pt. I, p. 517, and Gazette of India, 1888, Pt. I, p. 495.
The Scheduled Districts of the Central Provinces.	*See* Central Provinces Gazette, 1888, Pt. II, p. 193, and Gazette of India, 1888, Pt. I, p. 408.
The District of Coorg . . .	*See* Coorg Gazette, 1888, Pt. I, p. 94, and Gazette of India, 1888, Pt. I, p. 409.
The Andaman and Nicobar Islands .	*See* Andaman and Nicobar Islands Gazette, 3rd November, 1888, and Gazette of India, 1888, Pt. II, p. 517.

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III of 1877. XV of 1877. Indian Registration Act, 1877,[1] and the Indian Limitation Act, 1877;[1] It is hereby enacted as follows:—

1. (*1*) This Act may be called the Civil Procedure Code Amendment Act, 1888; and

(*2*) It shall come into force on the first day of July, 1888.

Construction.

2. (*1*) In this Act, unless there is something repugnant in the subject or context, "section" means a section, "schedule" a schedule, and "Chapter" a Chapter, of the Code of Civil Procedure.[2]

XIV of 1882.

(*2*) Any reference in any enactment heretofore passed or hereafter to be passed to any Act amended by this Act shall, so far as may be, be read as if made to that Act as so amended.

Addition of new section after section 4.

3. The following shall be inserted after section 4, namely:—

Power to modify the Code in its application to Revenue Courts.

"4A. (*1*) Where any Revenue Courts are governed by the provisions of the Code of Civil Procedure in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare that any portions of those provisions shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

The Province of Sind . . .	*See* Bombay Government Gazette, 1888, Pt. I, p. 830, and Gazette of India, 1888, Pt. I, p. 478.
The Districts of Kámrup, Nowgong (excluding the Mikir Hills Tract), Darrang, Sibságar, Lakhimpur (excluding the Dibrugarh Frontier Tract), Goálpára (excluding the Eastern Dwárs), Sylhet and Cachar (excluding the North Cachar Hills) (*except also s. 63*).	*See* Assam Gazette, 1888, Pt. II, p. 405, and Gazette of India, 1888, Pt. I, p. 478.

The whole Act (except ss. 65 and 66) has been extended, under the same section, to the Scheduled Districts of the Punjab, *see* Gazette of India, 1889, Pt. I, p. 299, and to Ajmere-Merwára (ss. 65 and 66 being already in force), *see* Gazette of India, 1889, Pt. II, p. 220. It is in force in the Kumáon Division corresponding to the Scheduled Districts, of Kumáon and Garhwál and the Taráí Parganas, so far as it amends the Code of Civil Procedure (Act XIV of 1882) as being part of that Code, which was extended thereto under the same section by Notification No. 641—VII-281, dated the 27th June, 1894, *see* Gazette of India, 1894, Pt. I, p. 578.

So much of the Act as amends the Indian Registration Act, 1877, and the Indian Limitation Act, 1877, has, under s. 3 (*a*) of the Scheduled Districts Act, 1874, been declared in force in the Districts of Hazáribágh, Lohárdagá (including the Palamau District then a part of the Lohárdagá District) and Mánbhum, and in the Pargana of Dhálbhum and the Kolhán in Singbhum, *see* Calcutta Gazette, 1888, Pt. I, p. 959, and Gazette of India, 1888, Pt. I, p. 524.

This portion of the Act has also been declared, under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886) to be in force in the Santhál Parganas, *see* Calcutta Gazette, 1895, Pt. I, p. 310.

So much of the Act as amends the Code of Civil Procedure (Act XIV of 1882) and the Indian Limitation Act, 1877 (XV of 1877) is in force in Upper Burma (except the Shan States) as being part of those two Acts declared in force there by the Burma Laws Act, 1898 (XIII of 1898).

The Act had to the same extent been previously extended to the Town of Mandalay only, in Upper Burma, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Gazette of India, 1888, Pt. I, p. 478.

[1] Printed, General Acts, Vol. III, Ed. 1898, pp. 41 and 75, respectively.

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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(*2*) 'Revenue Court' in sub-section (*1*) means a Court having jurisdiction under any local law to entertain suits relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits as being suits of a civil nature of which its cognizance is not barred by any enactment for the time being in force."

4. [*Repeal of part of section 8.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Addition to section 14.

5. To section 14 the following shall be added, namely :—

"Where a suit is instituted in British India on the judgment of any foreign Court in Asia or Africa except a Court of Record established by Letters Patent of Her Majesty or any predecessor of Her Majesty or a Supreme Consular Court established by an Order of Her Majesty in Council the Court in which the suit is instituted shall not be precluded from inquiry into the merits of the case in which the judgment was passed."

Addition of new section after section 16.

6. The following shall be inserted after section 16, namely :—

Place for institution of suit where local limits of jurisdiction of Courts are uncertain.

"16A. (*1*) When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction :

"Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

"*2* Where a statement has not been recorded under sub-section (*1*), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection if in its opinion there was, at the time of the institution of the suit, any reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto."

Addition to section 17.

7. In section 17, after Explanation II, the following shall be inserted, namely :—

"EXPLANATION III.—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely :—

(i) the place where the contract was made;

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(ii) the place where the contract was to be performed or performance thereof completed;

(iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

Amendment of section 27

8. In section 27 there shall be inserted after the words "the Court may" the words "at any stage of the suit", and after the words "any other person or persons" the words "with his or their consent".

Substitution of new section for section 53.

9. For section 53 the following shall be substituted, namely:—

When plaint may be rejected, returned for amendment or amended.

"53. The plaint may, at the discretion of the Court,—

(*a*) at, or at any time before, the settlement of issues be rejected if it does not disclose a cause of action;

(*b*) at, or at any time before, the settlement of issues be returned for amendment within a time to be fixed by the Court, and upon such terms as to the payment of costs occasioned by such amendment as the Court thinks fit, if it—

(i) is not signed and verified as hereinbefore required,

(ii) does not state correctly and without prolixity the several particulars hereinbefore required, or contains particulars other than those so required,

(iii) is wrongly framed by reason of nonjoinder or misjoinder of parties, or joins causes of action which ought not to be joined in the same suit, or

(iv) is not framed in accordance with the provisions of section 42;

(*c*) at any time before judgment be amended by the Court upon such terms as to the payment of costs as the Court thinks fit:

Provided that a plaint shall not be amended either by the party to whom it is returned for amendment, or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character.

When a plaint is amended under this section the amendment shall be attested by the signature of the Judge."

Substitution of new section for section 72.

10. For section 72 the following shall be substituted, namely:—

Delivery or transmission of summons for service.

"72. (*1*) If the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall ordinarily be delivered or sent to the proper officer to be served by him or one of his subordinates.

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"(2) The proper officer may be an officer of another Court than that in which the suit is instituted, and, where he is such an officer, the summons may, subject to any rules which the High Court may make in this behalf, be sent to him by post or in such other manner as the Court may direct."

Amendment of section 82.

11. In section 82, for the first twenty words the following shall be substituted, namely :—

"When a summons is returned under section 80, the Court shall, if the return under that section has not been verified by the affidavit of the serving-officer, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching his proceedings."

Substitution of new section for section 90.

12. For section 90 the following shall be substituted, namely :—

Service in foreign territory through British Resident or Court.

"90. If there is a British Resident or Agent, or a Superintendent appointed by the British Government, or a Court established or continued by the authority of the Governor General in Council, in or for the territory in which the defendant resides, the summons may be sent to such Resident, Agent, Superintendent or Court, by post or otherwise, for the purpose of being served upon the defendant ; and, if the Resident, Agent or Superintendent or the Judge of the Court returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service."

Substitution of new sections for sections 141 and 142.

13. For sections 141 and 142 the following shall be substituted, namely :—

Endorsements on documents admitted in evidence.

"141. (1) Subject to the provisions of the next following sub-section, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :—

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted,

and the endorsement shall be signed by the Judge.

"(2) If a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following section, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed by the Judge.

Endorsements on copies of admitted

"141A. (1) If a document admitted in evidence in the suit is an entry in a shop-book or other account in current use, the party on whose behalf the account is produced may furnish a copy of the entry.

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" (2) If such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished— entries in books, accounts and records.

(i) where the record, book or account is produced on behalf of a party, then by that party, or

(ii) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

" (3) When a copy of an entry is furnished under the foregoing provisions of this section, the Court shall, after causing the copy to be examined, compared and attested in manner mentioned in section 62, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

" 142. When a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (*a*), (*b*) and (*c*) of section 141, sub-section (*1*), and a statement of its having been rejected, and the endorsement shall be signed by the Judge. Endorsements on documents rejected as inadmissible in evidence.

" 142A. (*1*) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under section 141A, shall form part of the record of the suit. Recording of admitted and return of rejected documents.

" (2) Documents not admitted in evidence shall not form part of the record and shall be returned to the parties respectively producing them."

14. In section 143, for the words and figures " sections 62, 141 and 142 " there shall be substituted the following, namely :— Amendment of section 143.

" section 62, section 141A, sub-section (*3*), or section 142A, sub-section (*2*)."

15. In section 159 the words " or sent " shall be inserted after the word " delivered ". Amendment of section 159.

16. In section 168, for the words " shall examine the serving-officer on oath " the following shall be substituted, namely :—" shall if the certificate of the serving-officer has not been verified by affidavit, and may if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court ". Amendment of section 168.

17. The following shall be inserted after section 185, namely :— Addition of new section after section 185.

" 185A. (*1*) The Local Government may, by notification in the official Powers for

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Local Government to require evidence to be recorded in English.

Gazette, direct, with respect to any Judge specified in the notification, or following under a description set forth therein, that evidence in cases in which an appeal is allowed shall, instead of being taken down in the manner prescribed in the foregoing sections, be taken down by him with his own hand in the English language.

"(*2*) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (*1*), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

"(*3*) Evidence taken down under sub-section (*1*) or sub-section (*2*) shall be taken in the form mentioned in section 182, and be read over and signed, and, as occasion may require, interpreted and corrected as if it were evidence taken down under that section.

"(*4*) The Local Government may, by notification in the official Gazette, revoke or vary a direction notified under sub-section (*1*)."

Addition to section 191. Power to deal with evidence taken down by another Judge.

18. For section 191 the following shall be substituted, namely :—

"191. (*1*) Where the Judge taking down any evidence, or causing any memorandum to be made, under this Chapter, is prevented by death, transfer or other cause from concluding the trial of the suit, any successor to such Judge may deal with such evidence or memorandum as if he himself had taken it down or caused it to be made, and proceed with the suit from the stage at which his predecessor left it.

"(*2*) The provisions of sub-section (*1*) shall apply, so far as they can be made applicable, to a suit transferred under section 25:

"Provided that a Court transferring a suit under that section may, if it thinks fit, direct that the Court to which the suit is transferred shall recall all or any of the witnesses who have been examined and take their evidence afresh."

Addition to section 193.

19. To section 193 the following shall be added, namely :—

"A Court continuing a suit under section 191 may recall and re-examine a witness who has departed in accordance with section 173."

Amendment of section 209.

20. (*1*) In section 209, for the first thirteen words the words "When a decree is for the payment of money" shall be substituted.

(*2*) To the same section the following shall be added, namely :—

"Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

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21. (*1*) In section 216, for the first twenty-four words the following shall be substituted, namely :— Amendment of section 216.

"If the defendant has been allowed a set-off against the claim of the plaintiff".

(*2*) To the same section the following shall be added, namely :—

"The provisions of this section shall apply whether the set-off is admissible under section 111 or otherwise."

22. In section 223, for the words "in a case cognizable by a Court of Small Causes" the following shall be substituted, namely :— Amendment of section 223.

"in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes."

23. In section 229, after the word "established" the words "or continued" shall be inserted. Amendment of section 229.

24. After section 229 the following shall be inserted, namely :— Addition of new section after section 229.

"229A. So much of the foregoing sections of this Chapter as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply." Sending of decrees of British Indian Courts to British Courts in Native States.

25. [*Repeal of part of section 230.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

26. (*1*) In section 244, for clause (*c*) the following shall be substituted, namely :— Amendment of section 244.

"(*c*) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof."

(*2*) To the same section the following shall be added, namely :—

"If a question arises as to who is the representative of a party for the purposes of this section, the Court may either stay execution of the decree until the question has been determined by a separate suit or itself determine the question by an order under this section."

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Amendment of section 258.

27. For the last paragraph of section 258 the following shall be substituted, namely :—

"Unless such a payment or adjustment has been certified as aforesaid, it shall not be recognized as a payment or adjustment of the decree by any Court executing the decree."

Amendment of section 266.

28. (*1*) In the first proviso to section 266, clause (*a*), the words "and bedding" shall be inserted after the word "apparel".

(*2*) In the same proviso, clause (*b*), after the word "cattle" the words "and seed-grain" shall be inserted.

(*3*) In the same proviso, for clause (*h*) the following shall be substituted, namely :—

"(*h*) the salary of a public officer or of any servant of a Railway Company or local authority to the extent of—

(i) the whole of the salary where the salary does not exceed twenty rupees monthly ;

(ii) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and

(iii) one moiety of the salary in any other case."

(*4*) To the same proviso, after clause (*l*), the following shall be added, namely :—

"(*m*) any allowance declared by any law passed under the Indian Councils Act, 1861,[1] by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree ; 24 & 25 Vict., c. 67.

(*n*) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which under any law applicable to him is exempt from sale for the recovery of an arrear of such revenue."

(*5*) In the explanation to the same proviso, for the word and letter "and (*j*)" the letters and word "(*j*) and (*m*)" shall be substituted.

29. [*Amendment of section 289.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Addition to section 320.

30. To section 320 the following shall be added, namely:—

"Rules under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector, including the powers of the Court under sections

[1] Printed, Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 695.

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294 and 312, and may provide for orders passed by the Collector or any gazetted subordinate of the Collector, or orders passed on appeal with respect to such orders, being subject to appeal to and revision by superior Revenue-authorities as nearly as may be as the orders passed by the Court, or orders passed on appeal with respect to such orders, would be subject to appeal to and revision by appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

"A power conferred by the rules upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

"In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be deemed to be acting judicially within the meaning of Act No. XVIII of 1850 (*an Act for the protection of Judicial Officers*)."[1]

Amendment of Chapter XX.

31. (*1*) In section 349, for the words "is under arrest" the words "is in custody under the foregoing provisions of this Code" shall be substituted.

(*2*) In section 354, between the word "and" and the words "shall operate" the words "every order under that section appointing a Receiver" shall be inserted.

(*3*) For the second paragraph of section 360 the following shall be substituted, namely:—

"A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made in execution of a decree for money passed by that Court."

(*4*) At the end of Chapter XX the following shall be inserted, namely:—

Inapplicability of this Chapter to Presidency-towns.

"368A. Nothing in this Chapter shall apply to any Court having jurisdiction within the limits of the town of Calcutta, Madras or Bombay."

Amendment of Chapter XXI.

32. (*1*) For sections 363 and 364 the following shall be substituted, namely:—

Procedure where one of several plaintiffs dies and right to sue does not survive to

"363. If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may cause the legal representative, if any, of the

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 62.

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surviving plaintiffs alone.

deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the suit."

(2) For section 365 the following shall be substituted, namely :—

Procedure in case of death of sole or sole surviving plaintiff.

"365. In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall thereupon enter his name and proceed with the suit."

(3) To section 368 the following shall be added, namely :—

"The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon."

(4) After section 372 the following shall be added, namely :—

Power for Court to extend period of limitation prescribed for certain applications.

"372A. The provisions of section 5 of the Indian Limitation Act, 1877,[1] applicable to appeals shall apply to applications under sections 365, 366, 368 and 371." XV of 1877.

Addition to section 381.

33. To section 381 the following shall be added, namely :—

"or show good cause why such time should be extended, in which case the Court may extend it.

"Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

"The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application.

"The provisions of the Indian Limitation Act, 1877,[1] with respect to an application under section 103, and of this Code with respect to an appeal from an order rejecting such an application, shall apply, so far as they can be made applicable, to an application under this section for an order to set aside the dismissal of a suit, and to an appeal from an order rejecting such an application, respectively." XV of 1877.

Amendment

34. In section 386, for the words "or to any pleader of a High Court

[1] Printed, General Acts, Vol. III, Ed. 1898, p. 75.

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whom the Court issuing the commission thinks fit to appoint" the following shall be substituted, namely :— of section 386.

"or to any pleader or other person whom the Court issuing the commission may, subject to any rules of the High Court in this behalf, think fit to appoint."

35. In section 419, after the words "Government Pleader in any Court" the words "or such other person as the Local Government may for any Court appoint in this behalf" shall be inserted. Amendment of section 419.

36. In section 424, after the words "intending plaintiff" the words "and the relief which he claims" shall be inserted. Amendment of section 424.

37. (*1*) In section 432, after the words "British India" the following shall be inserted, namely :— Amendment of section 432.

"or at the request of any person competent in the opinion of the Government to act on behalf of such Prince or Chief."

(*2*) To the same section the following shall be added, namely :—

"An appointment under this section may be made for the purposes of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

"A person appointed under this section may authorize or appoint persons to make and do appearances, applications and acts in any such suit or suits as if he were himself a party to the suit or suits."

38. For section 433 the following shall be substituted, namely:— Substitution of new section for section 433.

"433. (*1*) Any such Prince or Chief, and any ambassador or envoy of a Foreign State, may, with the consent of the Governor General in Council, certified by the signature of one of the Secretaries to the Government of India (but not without such consent), be sued in any competent Court. Suit against Princes, Chiefs, ambassadors and envoys.

"(*2*) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless the Prince, Chief, ambassador or envoy—

(*a*) has instituted a suit in the Court against the person desiring to sue him, or

(*b*) by himself or another trades within the local limits of the jurisdiction of the Court, or

(*c*) is in possession of immoveable property situate within those limits and

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is to be sued with reference to such possession or for money charged on that property.

"(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

"(4) The Governor General in Council may, by notification in the Gazette of India, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor General in Council and a Secretary to the Government of India, respectively.

"(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property."

Transposition and amendment of section 434.

39. (1) Section 434 shall become section 229B, and any reference made before the commencement of this Act in any notification or other document to section 434 shall be read as a reference to section 229B.

"(2) In section 229B, the words "or continued" shall be inserted after the word "established".

Insertion of new section 434. Style of Princes and Chiefs as parties to suits.

40. After section 433 the following section shall be inserted, namely :—

"434. A Sovereign Prince or ruling Chief may sue, and shall be sued, in the name of his State :

"Provided that in giving the consent referred to in the last foregoing section the Governor General in Council or Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name."

41. [*Addition to section 464. Princes and Chiefs and wards of Court.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*[1]

Amendment of section 503.

42. In section 503, clause (*d*), the words "as the Court thinks fit" shall be inserted after the words "by way of remuneration".

Amendment of section 504.

43. In section 504, for the words "the Court may appoint the Collector" the words "the Court may, with the consent of the Collector, appoint him" shall be substituted.

Amendment of section 539.

44. In section 539, for the words "having a direct interest" the words "having an interest" shall be substituted.

Addition to section 540.

45. To section 540 the following shall be added, namely :—

"an appeal may lie under this section from an original decree passed *ex parte*."

[1] Printed, General Acts, Vol. VI, Ed. 1898.

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46. To section 549 the following shall be added, namely :— Addition to section 549.

"If such security be furnished, any costs for which a surety may have rendered himself liable may be recovered from him in execution of the decree of the Appellate Court in the same manner as if he were the appellant."

47. (*1*) For section 551 the following shall be substituted, namely :— Substitution of new section for section 551.

"551. (*1*) The Appellate Court, if it thinks fit, may, after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, dismiss the appeal without sending notice of the appeal to the Court against whose decree the appeal is made and without serving notice on the respondent or his pleader. Power to dismiss appeal without sending notice to Lower Court.

(*2*) If on the day fixed under sub-section (*1*) or any other day to which the hearing may be adjourned the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

(*3*) The dismissal of an appeal under this section shall be notified to the Court against whose decree the appeal is made."

(*2*) For the first paragraph of section 552 the following shall be substituted, namely :—

"Unless the Appellate Court dismisses the appeal under the last foregoing section, it shall fix a day for hearing the appeal."

(*3*) In section 558 the words and figures "section 551, sub-section (*2*)," shall be inserted before the word and figures "section 556".

48. (*1*) For the proviso to the first paragraph of section 561 the following shall be substituted, namely :— Amendment of, and addition to, section 561.

"Provided he has filed the objection in the Appellate Court within one month from the date of the service on him or his pleader under section 553 of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow."

(*2*) To the same section the following shall be added, namely :—

"Unless the respondent files with the objection a written acknowledgment from the appellant or his pleader of having received a copy thereof, the Appellate Court shall cause such a copy to be served, as soon as may be after the filing of the objection, on the appellant or his pleader, at the expense of the respondent.

"The provisions of Chapter XLIV shall, so far as they can be made applicable, apply to an objection under this section."

49. [*Repeal of certain words in section 562.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

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(*2*) In [1][section 562], for the word "investigate" the word "determine" shall be substituted.

50. [*Repeal of section 563.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of section 565.

51. In section 565, for the word "shall" the word "may" shall be substituted.

52. [*Repeal of certain words in section 566.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

(*2*) In [2][section 566], between the words "the Appellate Court may" and the words "frame issues" the words "if necessary" shall be inserted.

Amendment of section 582.

53. (*1*) In section 582, for the words "the words 'plaintiff,' 'defendant' and 'suit' shall be held to include an appellant, a respondent and an appeal, respectively," the following shall be substituted, namely :—

"the word 'plaintiff' shall be held to include a plaintiff-appellant or defendant-appellant, the word 'defendant' a plaintiff-respondent or defendant-respondent, and the word 'suit' an appeal."

(*2*) In the same section, the words and figures "including those of section 372A," shall be inserted after the words "The provisions hereinbefore contained."

Addition to section 584.

54. To section 584 the following shall be added, namely :—

"An appeal may lie under this section from an appellate decree passed *ex parte*."

Amendment of section 588.

55. (*1*) In section 588, clause (9), for the word "or" the word "for" shall be substituted.

(*2*) In the same section, clause (16), for the words "the first paragraph of," the words "and orders under" shall be substituted.

56. [*Repeal of part of section 589.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

57. [*Repeal of section 599 and part of section 601.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Addition to section 610.

58. After the second paragraph of section 610 the following shall be inserted, namely :—

"In so far as the order awards costs to the respondent, it may be executed

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[1] The word and figures "section 562" were substituted for the words "the same section" by the Repealing and Amending Act, 1891 (XII of 1891), second schedule, printed, General Acts, Vol. VI.

[2] The word and figures "section 566" were substituted for the words "the same section" by the Repealing and Amending Act, 1891 (XII of 1891).

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against a surety therefor, to the extent to which he has rendered himself liable, in the same manner as it may be executed against the appellant:

"Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety."

59. To section 626 the following proviso shall be added, namely :— Addition to section 626.

"and

(*c*) an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (*a*) to this section, be disposed of by his successor."

60. After section 646 the following shall be inserted, namely :— Addition of new sections after section 646.

"646A. (*1*) If at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit. Power to refer to High Court questions as to jurisdiction in small causes.

(*2*) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

"646B. (*1*) If it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and, if required by a party, shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

(*2*) On receiving the record and statement, the High Court may pass such order in the case as it thinks fit.

(*3*) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this section, the High Court may make such order as in the circumstances appears to it to be just and proper.

(*4*) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this section."

61. (*1*) For the third paragraph of section 648 the following shall be substituted :— Amendment of, and addition to, section 648.

"and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent

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to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him."

(*2*) To section 648 the following shall be added, namely :—

" Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Court of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court."

Amendment of section 650A.

62. In section 650A, the words " or continued " shall be inserted after the word " established ".

Addition to section 652.

63. To section 652 the following shall be added, namely :—

" A High Court not established under the Statute 24 & 25 Victoria, Chapter 104 [1] (*an Act for establishing High Courts of Judicature in India*), may, from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure."

Amendment of form No. 137, Schedule IV.

64. In form No. 137 of the fourth schedule the words " bound by the decree " shall be inserted after the words " remove any person ".

Amendment of the Indian Registration Act, 1877.

65. (*1*) After clause (*n*) of section 17 of the Indian Registration Act, 1877,[2] as amended by the Indian Registration Act, 1886, the following clause shall be added, namely :— III of 1877. VII of 1886.

"(*o*) a certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer."

(*2*) In the second paragraph of section 50 of the same Act, for the word and letter "and (*n*)" the letters and word " (*n*) and (*o*) " shall be substituted.

[1] The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 713.
[2] Printed, General Acts, Vol. III, Ed. 1898, p. 41.

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III of 1877. (3) The Indian Registration Act, 1877, shall be construed as if the amendments made in it by this section had been made therein by Act XII of 1879 (*an Act to amend* * * * *[1] *the Registration Act, 1877, and the Limitation Act, 1877*):

Provided that nothing in this sub-section shall be deemed to affect a decree or order made by any Court before the commencement of this Act.

XV of 1877. 66. (1) No. 161 of the second schedule to the Indian Limitation Act, 1877, shall be transposed and become No. 173A, and the entry against it in the second column of that schedule shall be "Ditto", signifying ninety days. Amendment of the Indian Limitation Act, 1877.

(2) [*Repeal of Nos. 171, 171A and 171B, Schedule II, Act XV of 1877.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

(3) For No. 171C of the same schedule the following shall be substituted, namely:—

Description of Application.	Period of Limitation.	Time from which period begins to run.
*	*	*
XIV of 1882. "171. Under section 371 of the Code of Civil Procedure, or under that section and section 582 of the same Code, for an order to set aside an order for abatement or dismissal.	Sixty days .	The date of the order for abatement or dismissal."

(4) After No. 175 of the same schedule the following shall be inserted, namely:—

Description of Application.	Period of Limitation.	Time from which period begins to run.
*	*	*
"175A. Under section 365 of the Code of Civil Procedure by the legal representative of a deceased plaintiff, or under that section and section 582 of the same Code by the legal representative of a deceased plaintiff-appellant or defendant-appellant.	Six months .	The date of the death of the deceased plaintiff or of the deceased plaintiff-appellant or defendant-appellant.
"175B. Under section 366 of the Code of Civil Procedure by a defendant, or under that section and section 582 of the same Code by a plaintiff-respondent or defendant-respondent.	Ditto .	The date of the death of the deceased plaintiff or of the deceased defendant-appellant or plaintiff-appellant.

[1] The words "the Code of Civil Procedure," were repealed by the Repealing and Amending Act, 1891 (XII of 1891), First Schedule, printed, General Acts, Vol. VI, Ed. 1898.

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Description of Application.	Period of Limitation.	Time from which period begins to run.
"175C. Under section 368 of the Code of Civil Procedure to have the legal representative of a deceased defendant made a defendant, or under that section and section 582 of the same Code to have the legal representative of a deceased plaintiff-respondent or defendant-respondent made a plaintiff-respondent or defendant-respondent.	Six months	The date of the death of the deceased defendant or of the deceased plaintiff-respondent or defendant-respondent."

ACT No. VIII OF 1888.[1]

[*5th September, 1888.*]

An Act to remove doubts as to the legality of the levy of certain Tolls.

WHEREAS doubts have been raised as to the operation of the Acts of the Governor General in Council, No. VIII of 1851 (*an Act for enabling Government to levy Tolls on Public Roads and Bridges*)[2] and No. XV of 1864 (*an Act to amend Act VIII of 1851*)[2]; It is hereby enacted as follows:—

Enforcement of Acts VIII of 1851 and XV of 1864 in the Punjab.

1. Acts VIII of 1851 and XV of 1864 shall be deemed to be in force throughout the territories now administered by the Lieutenant-Governor of the Punjab, and from the twenty-first day of August, 1857, and the twenty-fourth day of March, 1864, respectively, to have been in force in the territories for the time being administered as part of the Punjab.

Operation of the Act in the Punjab and certain other parts of British India.

2. (*1*) In any part of British India beyond the limits of the territories administered by the Governor of Fort St. George in Council, and the Lieutenant-Governors of Bengal and the North-Western Provinces, to or in which Acts VIII of 1851[2] and XV of 1864[2] may be or have been extended, or may

[1] Short title, "The Indian Tolls Act, 1888," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI, Ed. 1898.

For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 43; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 82 and 93.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously declared in force there under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, p. 467, *see* Burma Gazette, 1888, Pt. I, p. 497, and Gazette of India, 1888, Pt. I, p. 478.

[2] Printed, General Acts, Vol. I, Ed. 1898, pp. 79 and 436, respectively.

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be or have been declared to be in force, under the latter of those Acts or by this Act or by or under any other enactment, the Local Government shall be deemed to have and, where the Acts have been in force before the passing of this Act, to have had the same authority as if it had been included among the Local Governments specified in section 2 of Act VIII of 1851.

(2) "Presidency", where that word occurs in section 8 of Act VIII of 1851, shall be deemed to mean, and to have meant, the territories under the administration of a Local Government.

Validation of past levy of tolls.

3. All tolls levied, or purporting to have been levied, under Acts VIII of 1851 and XV of 1864, or either of those Acts, before the passing of this Act shall be deemed to have been lawfully levied.

Saving.

4. Nothing in the foregoing sections shall affect any proceedings commenced in any Civil Court before the first day of July, 1888.

Amendment of section 2, Act VIII, 1851.

5. In section 2 of Act VIII of 1851[1] * * * * * the word "and" shall be inserted between the words "the Lieutenant-Governor of the North-Western Provinces of Bengal" and the words "the Governor of the Presidency of Fort St. George in Council".

ACT No. X OF 1888.[2]

[*20th September, 1888.*]

An Act to amend the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882.

XIV of 1882. XV of 1882.

WHEREAS it is expedient to amend the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882; It is hereby enacted as follows:—

XIV of 1882.

Revision of the second schedule to Act XIV of 1882.

1. For the second schedule to the Code of Civil Procedure there shall be substituted the schedule in the first schedule to this Act.

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[1] The words "the words 'and the Governor of the Presidency of Bombay in Council' are hereby repealed and" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[2] Short title, "The Presidency Small Cause Courts Law Amendment Act, 1888," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 66; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 93 and 100.

So far as this Act amends the Code of Civil Procedure, it is in force in Upper Burma (except the Shan States) as being part of the Code, declared in force there by the Burma Laws Act, 1898 (XIII of 1898). Ss. 1 and 3 of Act X of 1888, had been previously extended under Act XIV of 1874, to the Town of Mandalay in Upper Burma, *see* Gazette of India, 1889, Pt. I, p. 292.

I.—Ss. 1 and 3 of this Act have been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to the—

(*1*) Province of Sindh, *see* Bombay Code, Vol. I, Ed. 1894, Appendix, p. xxxii;

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Amendment of Act XV of 1882

2. (*1*) To section 23 of the Presidency Small Cause Courts Act, 1882,[1] the following shall be added, namely :—"Subject to such control, the Court may modify or cancel any notification under this section as occasion may appear to it to require." XV of 1882.

(*2*) For the second schedule to the same Act there shall be substituted the schedule in the second schedule to this Act.

(*3*) Any declaration which has been notified under the proviso to section 23 of the Presidency Small Cause Courts Act, 1882,[1] before the day on which this Act is passed, and which was in force immediately before that day, shall, subject to the powers of the Court under that section, be construed, so far as may be, as referring to the schedule which has been substituted by the last foregoing sub-section for the second schedule to that Act.

Addition to section 589, Act XIV of 1882.

3. To section 589 of the Code of Civil Procedure [1] the following shall be added, namely :— XIV of 1882.

"Provided that an appeal from an order specified in section 588, clause (17), shall lie—

(*a*) to the District Court where the order was passed by a Court subordinate to that Court, and

(*b*) to the High Court in any other case."

4. [*Repeal of Act VIII of 1880 and s. 26 of Act IX of 1887.*] *Rep. by the Repealing and Amending Act, 1891* (*XII of 1891*).

(*2*) the Districts of Kámrup and Nowgong (excluding the Mikir Hill Tracts), Darrang, Sibságar, Lakhimpur (excluding the Dibrugarh Frontier Tract), Goálpára (excluding the Eastern Dwárs), Sylhet and Cachar (excluding the North Cachar Hills), *see* Assam Code, Ed. 1897, Appendix, p. 752;

(*3*) Ajmere-Merwára, *see* Ajmere Code, Ed. 1893, Appendix, p. vi;

(*4*) the Districts of Dárjiling and Jalpáiguri and the Mahál of Angul, *see* Gazette of India, 1889, Pt. I, p. 538, and Calcutta Gazette, 1889, Pt. I, p. 831 [*The amendments made by ss. 1 and 3 of this Act are also in force in the District of Angul as being part of Act XIV of 1882, declared in force therein by the Angul District Regulation, 1894* (*I of 1894*).];

(*5*) the Districts of Hazáribágh, Lohárdagá (which included at this time the present District of Palamau) and Mánbhum, and Pargana Dhálbhum in the District of Singbhum, *see* Gazette of India, 1889, Pt. I, p. 538, and Calcutta Gazette, 1889, Pt. I, p. 831;

(*6*) the Scheduled Districts of the Central Provinces, *see* Central Provinces Code, Ed. 1891, Appendix II, p. 392;

(*7*) Coorg District, *see* Coorg Code, Ed. 1893, Appendix, p. 172;

(*8*) Jaunsar Báwar and the scheduled portion of the Mirzápur District, *see* North-Western Provinces and Oudh Code, Ed. 1892, Appendix, p. xxxii;

(*9*) the Scheduled Districts of the Punjab, *see* Gazette of India, 1889, Pt. I, p. 299.

II.—Ss. 1 and 4 of the Act have been extended to the Kolhán, *see* Calcutta Gazette, 1889, Pt. I, p. 832, and s. 4 to the Districts of Hazáribágh, Lohárdagá (which included at this time the present District of Palamau) and Mánbhum, and Pargana Dhálbhum in the Singbhum District, *see* Gazette of India, 1889, Pt. I, p. 538, and Calcutta Gazette, 1889, Pt. I, p. 831.

III.—So much of s. 4 as repeals Act VIII of 1880 has been extended under the same section to Upper Burma, *see* Burma Code, Ed. 1888, Appendix, p. 494, *see* also Gazette of India, 1889, Pt. I, p. 292.

[1] Printed, General Acts, Vol. IV, Ed. 1898, pp. 590 and 262, respectively.

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THE FIRST SCHEDULE TO THIS ACT.

THE SECOND SCHEDULE TO THE CODE OF CIVIL PROCEDURE.

(*See section* 5.)

CHAPTERS AND SECTIONS OF THIS CODE EXTENDING TO PROVINCIAL COURTS OF SMALL CAUSES.

PRELIMINARY: Sections 1, 2, 3 and 5.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11 and the last paragraph of section 14.

CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

CHAPTER III.—Of Parties and their Appearances, Applications and Acts.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits.

CHAPTER VI.—Of the Issue and Service of Summons, except section 77.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, etc., of Documents.

CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.

CHAPTER XVIII.—Of Costs, sections 220, 221 and 222.

CHAPTER XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to

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283 (both inclusive), 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290 (so far as relates to moveable property), 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).

CHAPTER XX.—Section 360, Power to invest certain Courts with Insolvency jurisdiction.

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVI.—Suits by Paupers.

CHAPTER XXVII.—Suits by and against Government or Government Servants.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards Immoveable Property.

CHAPTER XXXVI.—Appointment of Receivers.

CHAPTER XXXVII.—Reference to Arbitration.

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties.

CHAPTER XLVI.—Reference to and Revision by High Court.

CHAPTER XLVII.—Of Review of Judgment, sections 623, 626 and 630.

CHAPTER XLIX.—Miscellaneous.

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THE SECOND SCHEDULE TO THIS ACT.

THE SECOND SCHEDULE TO THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882.[1]

(*See section 23.*)

PORTIONS OF CIVIL PROCEDURE CODE[1] EXTENDING TO COURT.

PRELIMINARY : Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of Suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24, and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances, Applications and Acts, except section 37, clause (*b*), and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (*b*), sub-clause (iv), section 55, section 57, clause (*b*), and sections 58 and 62.

CHAPTER VI.—Of the Issue and service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65 and 66.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VII.— Written Statements and Set-off, except sections 110, 112 and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Sending for Records and Production, etc., of Documents, sections 137 (except paragraph 2), 138, 140 (except the proviso and the last six words), 141, 141A, 142, 142A, sub-section (*1*), 143 and 145.

CHAPTER XI.—Settlement of Issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first Hearing, except sections 154 and 155.

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[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 590.

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CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive), and the second paragraph of section 193.

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207 and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, sections 229, 229A and 229B, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses) and 337 to 343 (both inclusive).

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of payment into Court.

CHAPTER XXIV.—Of requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVII.—Suits by or against Government or Public Officers.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433, sub-sections (*1*), (*2*), (*4*) and (*5*).

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of Immoveable Property.

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CHAPTER XXXV.—Interlocutory Orders, sections 498, 499, 500 and 502.
CHAPTER XXXVI.—Appointment of Receivers, section 503.
CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.
CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause (*b*), as relates to immoveable property.
CHAPTER XLVI.—Of Reference to and Revision by High Court.
CHAPTER XLIX.—Miscellaneous.

ACT No. XI OF 1888.[1]

[*5th October, 1888.*]

An Act to make an addition to the Indian Telegraph Act, 1885.

WHEREAS it is expedient to make an addition to the Indian Telegraph Act, 1885; It is hereby enacted as follows:— XIII of 1885.

1. The following section shall be added to that Act, namely:— Addition of section to Act XIII of 1885.
(*Vide supra*, p. 21.)

ACT No. XVII OF 1888.[2]

[*26th October, 1888.*]

An Act to amend the Indian Marine Act, 1887.

XIV of 1887. WHEREAS it is expedient to amend the Indian Marine Act, 1887; It is hereby enacted as follows:— Amendment of section 2, Act XIV of 1887.

1. For sub-section (*2*) of section 2 of the Indian Marine Act, 1887, the following shall be substituted, namely:—
(*Vide supra*, p. 166.)

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[1] Short title, "The Indian Telegraph (Presidency-towns) Act, 1888," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.
For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 45; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 83 and 102.
[2] Short title, "The Indian Marine Act (1887) Amendment Act, 1888," *see* the Indian Short Titles Act, 1897 (XIV of 1897).
For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 103; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 110 and 133.

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ACT No. I OF 1889.[1]

[*1st February, 1889.*]

An Act for the Protection of Coinage and other Purposes.

WHEREAS it is expedient to prohibit the making, or the possession for issue, or the issue, by private persons of pieces of metal for use as money;

And whereas it is also expedient to amend section 28 of the Indian Penal Code;[2] XLV of 1860.

It is hereby enacted as follows:—

Title, extent and commencement.

1. (*1*) This Act may be called the Metal Tokens Act, 1889.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force at once.

Definition.

2. In this Act "issue" means to put a piece of metal into circulation for the first time for use as money in British India, such piece having been made in contravention of this Act or brought into British India by sea or by land in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878.[3] VIII of 1878.

Prohibition of making by private persons of pieces of metal to be used as money.

3. No piece of copper or bronze or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made except by the authority of the Governor General in Council.

Penalty for unlawful making, issue or possession of such pieces.

4. (*1*) In either of the following cases, namely:—

(*a*) if any person makes in contravention of the last foregoing section, or issues or attempts to issue, any such piece as is mentioned in that section,

(*b*) if, after the expiration of three months from the commencement of this Act, any person has in his possession, custody or control any such piece as is mentioned in the last foregoing section, with intent to issue the piece,

the person shall be punished,

(*i*) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both; or,

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 19; for Report of the Select Committee, *see ibid*, 1889, Pt. IV, p. 3; and for Debates in Council, *see ibid*, 1888, Pt. VI, pp. 40 and 81, and *ibid*, 1889, Pt. VI, pp. 3 and 9.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Burma Gazette, 1893, Pt. I, p. 154.

[2] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

[3] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

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(*ii*) if he has been previously convicted under this section, with imprisonment which may extend to three years, or with fine, or with both.

(*2*) If any person is convicted of an offence under sub-section (*1*), he shall, in addition to any other punishment to which he may be sentenced, forfeit all such pieces as aforesaid, and all instruments and materials for the making of such pieces, which may have been found in his possession, custody or control.

(*3*) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so used or issued shall lie on the accused person.

Cognizance of offences under the last foregoing section.

5. (*1*) The offence of making, in contravention of section 3, any such piece as is mentioned in that section shall be a cognizable offence.

X of 1882.

(*2*) Notwithstanding anything in the Code of Criminal Procedure, 1882,[1] no other offence punishable under section 4 shall be a cognizable offence, or beyond the limits of a presidency-town be taken cognizance of by any Magistrate, except a District Magistrate or Subdivisional Magistrate, without the previous sanction of the District Magistrate or Subdivisional Magistrate.

Application of certain of the foregoing provisions of this Act to importation of pieces of metal for use as money.

VIII of 1878.

6. If at any time the Governor General in Council sees fit, by notification under section 19 of the Sea Customs Act, 1878,[2] to prohibit or restrict the bringing by sea or by land into British India of any such pieces of metal as are mentioned in section 3, he may by the notification direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in British India,[3] instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878,[2] and that the provisions of sub-section (*3*) of section 4 and sub-section (*1*) of section 5, or of either sub-section, in relation to the offence of making such pieces shall, notwithstanding anything in the Sea Customs Act, 1878,[2] apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act.

7. [*Addition to section 98, Act X of 1882.*] *Rep. by the Code of Criminal Procedure, 1898* (*Act V of 1898*).

Prohibition of receipt by local authorities and railways as

XLV of 1860.

8. (*1*) No piece of metal which is not coin as defined in the Indian Penal Code[4] shall be received as money by or on behalf of any railway-administration or local authority.

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[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).
[2] Printed, General Acts, Vol. III, Ed. 1898, p. 168.
[3] For notification issued under this power, *see* Gazette of India, 1889, Pt. I, p. 76.
[4] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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money of metal which is not coin.

(*2*) If any person on behalf of a railway-administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees.

Amendment of section 28 of the Indian Penal Code.

9. For the *Explanation* to section 28 of the Indian Penal Code[1] the following shall be substituted, namely:— XLV of 1860.

"*Explanation 1.*—It is not essential to counterfeiting that the imitation should be exact.

"*Explanation 2.*—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised."

ACT No. II OF 1889.[2]

[*15th February, 1889.*]

An Act to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India.

WHEREAS it is expedient to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India; It is hereby enacted as follows :—

Title, extent and commencement.

1. (*1*) This Act may be called the Measures of Length Act, 1889.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force on such day as the Governor General in Council may appoint in this behalf.[3]

Standard yard.

2. The imperial standard yard for the United Kingdom shall be the legal standard measure of length in British India and be called the standard yard.

Measure for determining

3. A copy, approved by the Governor General in Council, of the imperial

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 41; for Report of the Select Committee, *see ibid*, 1889, Pt. IV, p. 6 ; and for Proceedings in Council, *see ibid*, 1888, Pt. VI, pp 66 and 82, and *ibid*, 1889, Pt. VI, p. 20.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Burma Gazette, 1893, Pt. I, p. 154.

[3] The Act was brought into force on the 15th June, 1889, *see* Gazette of India, 1889, Pt. I, p. 305.

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standard for determining the length of the imperial standard yard for the United Kingdom shall be kept in such place within the limits of the Town of Calcutta as the Governor General in Council may prescribe,[1] and shall be the standard for determining the length of the standard yard.

length of standard yard.

4. One-third part of the standard yard shall be called a standard foot, and one thirty-sixth part of such a yard shall be called a standard inch.

Standard foot and inch.

5. Any measure having stamped thereon or affixed thereto a certificate purporting to be made under the authority of the Governor General in Council or of a Local Government, and stating that the measure is of the length of the standard yard or that a measure marked thereon as a foot or inch is of the length of the standard foot or standard inch, as the case may be, shall, when produced before any Court by any public servant having charge of the measure in pursuance of any direction published in an official Gazette by order of the Governor General in Council or the Local Government,[2] or by any person acting under the general or special authority of such a public servant, be deemed to be correct until its inaccuracy is proved.

Presumption in favour of accuracy of certified measures.

6. A public servant having in pursuance of such a direction charge of such a measure as is mentioned in the last foregoing section shall allow any person to inspect it free of charge at all reasonable times and to compare therewith or with any measure marked thereon any measure which such person may have in his possession.

Inspection of certified measures by the public.

7. There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866,[3] by the Commissioners in Calcutta under section 370 of the Calcutta Municipal Consolidation Act, 1888,[4] by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888, by the Municipal Commissioner in the City of Bombay under section 418 of the City of Bombay Municipal Act, 1888,[5] and by the District Magistrate under section 20 of Regulation XII of 1827 [6] of the Bombay Code, such certified measures

Ben. Act IV of 1866.

Ben. Act II of 1888.

Mad. Act III of 1888.

Bom. Act III of 1888.

Certified measures to be kept by authorities required by existing enactments to keep measures of length.

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[1] For notification prescribing such a place, *see* Gazette of India, 1889, Pt. I, p. 505.

[2] For officers appointed to have charge of such measures in—
(1) Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. 267;
(2) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 495;
(3) Burma, *see* Burma Rules Manual, Ed. 1897, p. 203;
(4) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 250;
(5) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 226 and 227;
(6) North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 126.

[3] Printed, Bengal Code, Vol. II, Ed. 1890, p. 61

[4] Printed, *ibid*, p. 383.

[5] Printed, Bombay Code, Vol. II, Ed. 1896, p. 193.

[6] Printed, Bombay Code, Vol. I, Ed. 1894, p. 17.

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of the standard yard, standard foot and standard inch as are mentioned in section 5.

ACT No. IV OF 1889.[1]

[*1st March, 1889.*]

An Act to amend the Law relating to Fraudulent Marks on merchandise.

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows :—

Title, extent and commencement.

1. (*1*) This Act may be called the Indian Merchandise Marks Act, 1889.

(*2*) It extends to the whole of British India; * * * *[2]

(*3*) It shall come into force on the first day of April, 1889.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "trade mark" has the meaning assigned to that expression in section 478 of the Indian Penal Code[3] as amended by this Act : XLV of 1860.

(*2*) "trade description"[4] means any description, statement or other indication, direct or indirect,—

(*a*) as to the number, quantity, measure, gauge or weight of any goods, or

(*b*) as to the place or country in which, or the time at which, any goods were made or produced, or

(*c*) as to the mode of manufacturing or producing any goods, or

(*d*) as to the material of which any goods are composed, or

(*e*) as to any goods being the subject of an existing patent, privilege or copyright ;

and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act :

(*3*) [4] "false trade description" means a trade description which is untrue in a material respect as regards the goods to which it is

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 109 ; for Report of the Select Committee, *see ibid*, 1889, Pt. V, p. 27 ; and for Proceedings in Council, *see ibid*, 1888, Pt. VI, pp. 111 and 136, and *ibid*, 1889, Pt. VI, p. 88.

[2] The words "and subject to the provision of the last section of this Act," were repealed by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (IX of 1891), printed, General Acts, Vol. VI, Ed. 1898.

[3] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

[4] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 3 (*1*)].

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applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act:

(*4*) "goods" means anything which is the subject of trade or manufacture: and

(*5*) "name" includes any abbreviation of a name.

Amendment of the Indian Penal Code.

XLV of 1860. **3.** For that part of Chapter XVIII of the Indian Penal Code[1] which relates to Trade and Property Marks, the following shall be substituted, namely:— **Substitution of new sections for sections 478 to 489 of the Indian Penal Code.**

"*Of Trade, Property and Other Marks.*

[2] "478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and for the purposes of this Code the expression 'trade mark' includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable. **Trade mark.** 46 & 47 Vict., c. 57.

"479. A mark used for denoting that moveable property belongs to a particular person is called a property mark. **Property mark.**

"480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark. **Using a false trade mark.**

"481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so **Using a false property mark.**

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[2] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 3 (*1*)].

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marked, or any property or goods contained in any such receptacle so marked belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using a false trade mark or property mark.

"482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

Counterfeiting a trade mark or property mark used by another.

"483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant.

"484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that the property is of a particular quality or has passed through a particular office or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a trade mark or property mark.

"485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Selling goods marked with a counterfeit trade mark or property mark.

"486. Whoever sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

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be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

"487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

"488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Punishment for making use of any such false mark.

"489. Whoever removes, destroys, defaces or adds to any property mark intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Tampering with property mark with intent to cause injury.

Trade Descriptions.

[1] 4. (*1*) The provisions of this Act respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

Provisions supplemental to the definition of false trade description.

[2] (*2*) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the

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[1] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28 s. 3 (*2*)], and Wright thereon, pp. 16 and 38.
[2] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 3 (*3*)].

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purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

(*a*) not being a trade mark, or part of a trade mark, and

(*b*) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials.

(*3*) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Application of trade descriptions.

[1] **5.** (*1*) A person shall be deemed to apply a trade description to goods who—

(*a*) applies it to the goods themselves, or

(*b*) applies it to any covering, label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

(*c*) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or

(*d*) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(*2*) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(*3*) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

Penalty for applying a false trade description

[2] **6.** If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

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[1] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 5].
[2] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 2 (*1*)].

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Penalty for selling goods to which a false trade description is applied.

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Unintentional Contravention of the Law relating to Marks and Descriptions.

Unintentional contravention of the law relating to marks and descriptions.

[1] **8.** Where a person is accused under section 482 of the Indian Penal Code [2] of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code [2] of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves— XLV of 1860.

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and

(*b*) that he took reasonable precautions against committing the offence charged, and

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[1] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 6.]
[2] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(*d*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,

he shall be acquitted.

Forfeiture of Goods.

Forfeiture of goods.

[1] **9.** (*1*) When a person is convicted under section 482 of the Indian Penal Code [2] of using a false trade mark, or under section 486 of that Code of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code [2] or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed. XLV of 1860.

(*2*) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(*3*) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

Amendment of the Sea Customs Act, 1878.[3]

Amendment of section 18, Act VIII of 1878.

[4] **10.** (*1*) For clause (*d*) of section 18 of the Sea Customs Act, 1878, the following shall be substituted, namely :— VIII of 1878.

" (*d*) goods having applied thereto a counterfeit trade mark within the

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[1] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 2 (*3*) (iii)].
[2] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[3] Printed, General Acts, Vol. III, p. 168.
[4] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s 16 (*2*).]

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XLV of 1860. IV of 1889.

meaning of the Indian Penal Code,[1] or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889:

(*e*) goods made or produced beyond the limits of the United Kingdom and British India and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India, unless—

(i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) [2] [the country in which that place is situated is] in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and the same language and character as the name or trade mark."

(*2*) To section 18 of the Sea Customs Act, 1878,[3] as amended by sub-section (*1*), the following shall be added, namely :—

" (*f*) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or

(iii) having been manufactured within those limits have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881.[3]

XV of 1881. VIII of 1878.

Addition of a section after section 19, Act VIII of 1878.

11. The following shall be added after section 19 of the Sea Customs Act, 1878,[3] namely :—

[4] " 19A. (*1*) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

[2] The words " the country in which that place is situated is " were substituted for the words " that place and the country in which it is situated are " by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (IX of 1891), printed, General Acts, Vol. VI.

[3] Printed, General Acts, Vol. III, pp. 168 and 381, respectively.

[4] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 16 (*2*), (*3*), (*4*), (*5*), (*7*) and (*8*)].

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proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(*2*) The Governor General in Council may make regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(*3*) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(*4*) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(*5*) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(*6*) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes."

Stamping of Length of Piece-goods manufactured in British India.

Stamping of length of piece-goods manufactured in British India.

12. (*1*) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881,[1] shall not be removed from those premises without having conspicuously stamped in English numerals on each XV of 1881.

[1] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

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piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece.

(*2*) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (*1*), every such piece, and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees.

Supplemental Provisions.

Evidence of origin of goods imported by sea.

[1] **13.** In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878,[2] as amended by this Act, be *primâ facie* evidence of the place or country in which the goods were made or produced.

VIII of 1878.

Costs of defence or prosecution.

[3] **14.** (*1*) On any such prosecution as is mentioned in the last foregoing section or on any prosecution for an offence against any of the sections of the Indian Penal Code,[4] as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

XLV of 1860.

(*2*) Such costs shall, on application to the Court, be recoverable as if they were a fine.

Limitation of prosecution.

[5] **15.** No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

Authority of the Governor General in Council to issue instructions as to administration of this Act.

16. (*1*) The Governor General in Council may, by notification in the Gazette of India and in local official Gazettes, issue instructions [6] for observance by Criminal Courts in giving effect to any of the provisions of this Act.

(*2*) Instructions under sub-section (*1*) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or

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[1] *Cf.* the Merchandise Marks Act, 1887 [50 & 51 Vict., c. 28, s. 10 (*2*)].
[2] Printed, General Acts, Vol. III, p. 168.
[3] *Cf.* the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28, s. 14).
[4] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[5] *Cf.* the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28, s. 15).
[6] For notifications containing such instructions, *see* Gazette of India, 1891, Pt. I, p. 626.

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weight, which are to be recognized by Criminal Courts as permissible in the case of any goods.

Implied warranty on sale of marked goods.

[1] **17.** On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer.

Savings.

[2] **18.** (*1*) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for any thing in this Act, be brought against him.

(*2*) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(*3*) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

[3] **19.** [*Date of commencement of this Act as regards unstamped piece-goods.*] *Rep. by Act IX of 1891.*

Definition of piece-goods.

[4] **19.** For the purposes of section 12 of this Act and clause (*f*) of section 18 of the Sea Customs Act, 1878,[5] as amended by this Act, the Governor General in Council may, by notification in the Gazette of India,[6] declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece.' VIII of 1878.

Determination of character of goods by sampling.

[4] **20.** (*1*) The Governor General in Council may make rules,[6] for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the

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[1] *Cf.* the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28, s. 17).

[2] *Cf.* the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28, s. 19).

[3] The heading to s. 19, namely, "Transitory Provision," was repealed at the same time by the same Act, namely, the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (IX of 1891).

[4] Ss. 19 to 22 here printed were added by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (IX of 1891), s. 4, printed, General Acts, Vol. VI.

[5] Printed, General Acts, Vol. III, p. 168.

[6] For rules issued under these sections, *see* Gazette of India, 1891, Pt. I, p. 187.

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number of samples to be selected and tested and for the selection of the samples.

(*2*) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (*1*), the Court or officer of Customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(*3*) The average of the results of the testing in pursuance of rules under sub-section (*1*) or of an order under sub-section (*2*) shall be *primâ facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(*4*) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (*1*) or of an order under sub-section (*2*) desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of Customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Governor General in Council in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of Customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (*1*), or in sub-section (*2*), as the case may be.

(*5*) The average of the results of the testing referred to in sub-section (*3*) and of the further testing under sub-section (*4*) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(*6*) Rules under this section shall be made after previous publication.

Information as to commission of offence.

[1] **21.** An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

Punishment of abetment in India of

[1] **22.** If any person, being within British India, abets the commission, without British India, of any act which, if committed in British India,[2] would

[1] Ss. 21 and 22 were added by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (IX of 1891), s. 4, printed, General Acts, Vol. VI.

[2] *Cf.* s. 108A of the Indian Penal Code (Act XLV of 1860), printed, General Acts, Vol. I, Ed. 1898, p. 240.

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acts done out of India.

under this Act, or under any section of that part of Chapter XVIII of the Indian Penal Code [1] which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in British India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted. XLV of 1860.

ACT No. VI OF 1889.[2]

[*8th March, 1889.*]

An Act to amend the Indian Succession Act, 1865,[3] the Probate and Administration Act, 1881,[4] the Court-fees Act, 1870,[5] * * *[6] and to make provision with respect to certain other matters.

WHEREAS it is expedient to amend the Indian Succession Act, 1865,[3] the Probate and Administration Act, 1881,[4] the Court-fees Act, 1870,[5] * * * *[6] and to make provision with respect to certain other matters; It is hereby enacted as follows:— X of 1865. V of 1881. VII of 1870.

Title, extent and commencement.

1. (*1*) This Act may be called the Probate and Administration Act, 1889.

(*2*) It applies to the whole of British India[7] * * * * *; and

(*3*) It shall come into force at once.

Indian Succession Act, 1865.

Amendment of section 234, Act X, 1865.

2. After the 4th clause of the *explanation* to section 234 of the Indian Succession Act, 1865,[3] the following shall be added, namely:— X of 1865.

"5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 53; for Report of the Select Committee, *see ibid*, 1889, Pt. IV, p. 39; and for Proceedings in Council, *see ibid*, 1888, Pt. VI, pp. 90 and 136, and *ibid*, 1889, pp. 20 and 45.

The whole Act, with the exception of s. 21, has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

The Act has also been declared to be in force in the Santhál Parganas under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, Vol. I, p. 598.

As being part of the Acts amended by it, the Act is in force in British Baluchistan, *see* British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69.

[3] Printed, General Acts, Vol. I, Ed. 1898, p. 468.

[4] Printed, General Acts, Vol. III, Ed. 1898, p. 339.

[5] Printed, General Acts, Vol. II, Ed. 1898, p. 124.

[6] The words "and the Stamp Act, 1879," were repealed by the Indian Stamp Act, 1899.

[7] The words "inclusive of Upper Burma, except the Shan States," were repealed by the Fifth Schedule to the Burma Laws Act, 1898 (XIII of 1898).

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accordance with the provisions of Part XXXIV of this Act or has exhibited under that Part an inventory or account which is untrue in a material respect."

3. In section 244 of the same Act, for the words "and that the petitioner is the executor therein named" the following shall be substituted, namely :— Amendment of section 244, Act X, 1865.

"the amount of assets which are likely to come to the petitioner's hands and

"that the petitioner is the executor named in the will ;".

4. For the last forty-two words of section 254 of the same Act the following shall be substituted, namely :— Amendment of section 255, Act X, 1865.

"he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint."

5. For the last forty-five words of section 255 of the same Act the following shall be substituted, namely :— Amendment of section 255, Act X, 1865.

"he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint."

6. In section 256 of the same Act, for the words "Every person to whom any grant of administration shall be committed" the words "Every person to whom any grant of letters of administration is committed" shall be substituted. Amendment of section 256, Act X, 1865.

7. For section 277 of the same Act the following shall be substituted, namely :— Substitution of new section for section 277, Act X, 1865.

"277. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts Inventory and account.

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owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.[1] XLV of 1860.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code."

Amendment of section 277A, Act X, 1865.

8. In section 277A of the same Act, for the words "it is sought to obtain a grant" the words "a grant has been made", and for the words and figures "the person applying for administration after the first day of April, 1875," the word "administrator", shall be substituted.

Amendment of section 283, Act X, 1865.

9. (1) In section 283 of the same Act, for the words "the country in which he was domiciled" the words "British India" shall be substituted.

(2) [*Repeal of illustration to section 283.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Addition to Act X, 1865. Surrender of revoked probate or letters of administration.

10. To the same Act the following shall be added, namely :—

"333. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both."

Probate and Administration Act, 1881.[2]

Amendment of section 50, Act V, 1881.

11. After the 4th clause of the *explanation* to section 50 of the Probate and Administration Act, 1881, the following shall be added, namely :— V of 1881.

"5th, that the person to whom the grant was made has wilfully and

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[2] Printed, General Acts, Vol. III, Ed. 1898, p. 339.

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without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect."

Amendment of section 76 Act V, 1881.

12. For the portion of section 76 of the same Act beginning with the words "he having undertaken to administer the same" and ending with the words "within one year from the same date" the following shall be substituted, namely :—

"he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint."

Amendment of section 77, Act V, 1881.

13. For the portion of section 77 of the same Act beginning with the words "he having undertaken to administer the same" and ending with the words "within one year from the same date" the following shall be substituted, namely :—

"he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint."

Substitution of new section for section 90, Act V, 1881.

14. For section 90 of the same Act the following shall be substituted, namely :—

Power of executor or administrator to dispose of property.

"90. (*1*) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

(*2*) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

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(*3*) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(*b*) lease any such property for a term exceeding five years.

(*4*) A disposal of property by an executor or administrator in contravention of sub-section (*2*) or sub-section (*3*), as the case may be, is voidable at the instance of any other person interested in the property.

(*5*) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (*1*), (*2*) and (*4*), or of sub-sections (*1*), (*3*) and (*4*), as the case may be.

(*6*) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section."

Substitution of new section for section 98, Act V, 1881.

15. For section 98 of the same Act the following shall be substituted, namely :—

Inventory and account.

"98. (*1*) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(*2*) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(*3*) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.[1] XLV of 1860.

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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(*4*) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code."

Amendment of section 99, Act V, 1881.

16. In section 99 of the same Act, for the words "it is sought to obtain a grant" the words "a grant has been made", and for the words "the person applying for administration" the word "administrator", shall be substituted.

Addition to Act V, 1881. Surrender of revoked probate or letters of administration.

17. To the same Act the following shall be added, namely :—

"157. (*1*) When a grant or probate of letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(*2*) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both."

Court-fees Act, 1870,[1] * * * *[2]

18. (*1*) [*Repeal of article 16 (Sch. II), Act VII of 1870.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of Act VII, 1870.

(*2*) In article 6 of the second schedule to the Court-fees Act, 1870,[1] for the words "Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority," the following words shall be substituted, namely :—

"Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1882,[3] or the Code of Civil Procedure."[4]

X of 1882.
XIV of 1882.

(*3*), (*4*) [*Amending the Indian Stamp Act, 1879.*] *Rep. by the Indian Stamp Act, 1899.*

Miscellaneous.

Validation of acts under grants of administra-

19. Notwithstanding anything in section 90 of the Probate and Administration Act, 1881,[5] a disposal of property by an executor or administrator who was appointed before the commencement of this Act, and to whom the

V of 1881.

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[1] Printed, General Acts, Vol. II, Ed. 1898, p. 124.
[2] The words "and Indian Stamp Act, 1879" in the heading were repealed by the Indian Stamp Act, 1899.
[3] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).
[4] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.
[5] Printed, General Acts, Vol. III, Ed. 1898, p. 339.

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tion already made.

provisions of that section were applicable, shall not be void by reason only that the consent of the Court to the disposal of the property was not obtained.

Recovery of penalties and forfeiture under Act VII, 1870.

20. (*1*) Any penalty or forfeiture under section 19G or section 19H of the Court-fees Act, 1870,[1] may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as it were an arrear of land-revenue by any Collector in any part of British India. VII of 1870.

(*2*) The Chief Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture, or any part of any further penalty payable under section 19E of the said Act.

21. [*Repeal of part of section 7 (3), Bengal Act VII of 1880.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*[2]

THE SUCCESSION CERTIFICATE ACT, 1889.

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[1] Printed, General Acts, Vol. II, Ed. 1898, p. 124.
[2] Printed, General Acts, Vol. VI, Ed. 1898.

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SECTIONS.

20. Effect on certificate of previous certificate, probate or letters of administration.
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THE FIRST SCHEDULE.—ENACTMENTS REPEALED.
THE SECOND SCHEDULE.—FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

ACT No. VII OF 1889.[1]

[*8th March, 1889.*]

An Act to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons.

WHEREAS it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows :—

Title, commencement, extent and application.

1. (*1*) This Act may be called the Succession Certificate Act, 1889.

(*2*) It shall come into force on the first day of May, 1889 ; and

(*3*) It extends to the whole of British India[2] * * * * *.

(*4*) But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 60 ; for Report of the Select Committee, *see ibid*, 1889, Pt. V, p. 45 ; and for Proceedings in Council, *see ibid*, 1888, Pt. VI, pp. 92 and 136, and *ibid*, 1889, Pt. VI, p. 48.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

The Act has also been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, printed, Baluchistan Code, Ed. 1890, p. 69; and in the Angul District by the Angul District Regulation, 1894 (I of 1894), s. 3.

It has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, p. 597.

[2] The words "inclusive of Upper Burma, except the Shan States," were repealed by the Fifth Schedule to the Burma Laws Act, 1898 (XIII of 1898).

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administration under the Indian Succession Act, 1865,[1] or by probate of a will to which the Hindu Wills Act, 1870,[2] applies, or by letters of administration with a copy of such a will annexed. X of 1865. XXI of 1870.

Repeal.

2. (*1*) The enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(*2*) But nothing in this Act shall affect any certificate granted before the commencement of this Act under Act XXVII of 1860[3] or any enactment repealed by that Act.

(*3*) Any enactment except this Act and section 152 of the Probate and Administration Act, 1881,[4] or any document, referring to any enactment repealed by this Act shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof. V of 1881.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "District Court", subject to the other provisions of this Act and to the provisions of proviso (*b*) to section 23 of the Punjab Courts Act, 1884,[5] and of any other like enactment for the time being in force, means a Court presided over by a District Judge : and XVIII of 1884.

(*2*) "Security" means—

(*a*) any promissory note, debenture, stock or other security of the Government of India ;

(*b*) any bond, debenture or annuity charged by the Imperial Parliament on the revenues of India ;

(*c*) any stock or debenture of, or share in, a company or other incorporated institution ;

(*d*) any debenture or other security for money issued by, or on behalf of, a local authority ;

(*e*) any other security which the Governor General in Council may, by notification in the Gazette of India, declare to be a security for purposes of this Act.

Proof of representative title a con-

4. (*1*) No Court shall—

(*a*) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or

[1] Printed, General Acts, Vol. I, Ed. 1896, p. 468.
[2] Printed, General Acts, Vol. II, Ed. 1898, p. 168.
[3] Repealed by this Act.
[4] Printed, General Acts, Vol. III, Ed. 1898, p. 339.
[5] *See* the revised edition, as modified up to the 1st April, 1891, published by the Legislative Department.

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(*b*) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 36 or section 37 of the Administrator General's Act, 1874,[1] and having the debt mentioned therein, or

(iii) a certificate granted under this Act and having the debt specified therein, or

(iv) a certificate granted under Act XXVII of 1860 [2] or an enactment repealed by that Act, or

(v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 [3] and, if granted after the commencement of this Act, having the debt specified therein.

dition precedent to recovery through the Courts of debts from debtors of deceased persons.

(*2*) The word "debt" in sub-section (*1*) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

Court having jurisdiction to grant certificate.

5. The District Court within the jurisdiction of which the deceased ordinarily resided at the time of his death, or if at that time he had no fixed place of residence then within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate under this Act.

Application for certificate.

6. (*1*) Application for such a certificate must be made to the District Court by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure [4] for the signing and verification of a plaint by or on behalf of a plaintiff and setting forth the following particulars, namely :—

XIV of 1882.

(*a*) the time of the death of the deceased;

(*b*) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits;

(*c*) the family or other near relatives of the deceased and their respective residences;

(*d*) the right in which the petitioner claims;

(*e*) the absence of any impediment under section 1, sub-section (*4*), or

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 419.
[2] Repealed by this Act.
[3] Printed, Bombay Code, Vol. I, Ed. 1894, p. 11.
[4] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(*f*) the debts and securities in respect of which the certificate is applied for.

(*2*) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Procedure on application.

7. (*1*) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(*a*) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

(*b*) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Court, subject to any rules made by the High Court, in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(*2*) When the Court decides the right thereto to belong to the applicant it shall make an order for the grant of the certificate to him.

(*3*) If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *primâ facie* the best title thereto.

(*4*) When there are more applicants than one for a certificate and it appears to the Court than more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest, and the fitness in other respects, of the applicants.

Contents of certificate.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate and may thereby empower the person to whom the certificate is granted—

(*a*) to receive interest or dividends on, or

(*b*) to negotiate or transfer, or

(*c*) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

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Requisition of security from grantee of certificate.

9. (*1*) The District Court shall in any case in which it proposes to proceed under section 7, sub-section (*3*) or sub-section (*4*), and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to ensure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(*2*) The Court may, on application made by petition and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

Extension of certificate.

10. (*1*) A District Court may from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(*2*) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last foregoing section may be required, in the same manner as upon the original grant of a certificate.

Forms of certificate and extended certificate.

11. Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the second schedule.

Amendment of certificate in respect of powers as to securities.

12. Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Court may, on application made by petition and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

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Amendment of Act VII, 1870.

13. (*1*) For articles 11 and 12 of the first schedule to the Court-fees Act, 1870,[1] the following shall be substituted, namely :— VII of 1870.

Number.		Proper fee.
"11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value: provided that when after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827,[2] in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant. VII of 1889.
"12. Certificate under the Succession Certificate Act, 1889.	In any case . . .	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(*1*) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (*2*) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
"12A. Certificate under the Regulation of the Bombay Code No. VIII of 1827.[2]		(*1*) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and (*2*) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees."

[1] Printed, General Acts, Vol. II, Ed. 1888, p. 124.
[2] Printed, Bombay Code, Vol. I, Ed. 1894, p. 11.

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VII of 1870. (2) In the Court-fees Act, 1870,[1] section 19, clause viii, for the words and figures "and certificate mentioned in the First Schedule to this Act annexed, No. 12," the words and figures "and, save as regards debts and securities, a certificate under[2] Bombay Regulation VIII of 1827" shall be substituted.

Mode of collecting court-fees on certificates.

14. (1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first schedule to the Court-fees Act, 1870,[1] in respect of the certificate or extension applied for.

VII of 1870.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

Local extent of certificate.

15. A certificate under this Act shall have effect throughout the whole of British India.

Effect of certificate.

16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 1, sub-section (4), or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

Effect of certificate granted or extended by British representative in foreign State.

17. Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-fees Act, 1870,[1] with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.

VII of 1870.

Revocation of certificate.

18. A certificate granted under this Act may be revoked for any of the following causes, namely:—

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 124.
[2] Printed, Bombay Code, Vol. I, Ed. 1894, p. 11.

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false suggestion, or by the concealment from the Court of some thing material to the case ;

(*c*) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently ;

(*d*) that the certificate has become useless and inoperative through circumstances ;

(*e*) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Appeal.

19. (*1*) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(*2*) An appeal under sub-section (*1*) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.[1] XIV of 1882.

(*3*) Subject to the provisions of sub-section (*1*) and of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

Effect on certificate of previous certificate, probate or letters of administration.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

Effect on certificate of subsequent probate or letters of administration.

21. (*1*) A grant of probate or letters of administration under the Probate and Administration Act, 1881,[2] in respect of an estate shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate. V of 1881.

(*2*) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.
[2] Printed, General Acts, Vol. III, Ed. 1898, p. 339.

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suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

Validation of certain payments made in good faith to holder of invalid certificate.

22. Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

Prohibition of exercise of certain powers by curators.

23. (*1*) Where a certificate has been granted under this Act or Act XXVII of 1860,[1] or a grant of probate or letters of administration has been made, a curator appointed under Act XIX of 1841[2] shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(*2*) But persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

Effect of certain probates and letters.

24. Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used in the charters of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of securities included in the estate of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the Indian Succession Act, 1865:[3]

X of 1865.

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has before the commencement of this Act been declared by any competent Court to be invalid.

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[1] Repealed by this Act.

[2] The Succession (Property Protection) Act, 1841, printed, General Acts, Vol. I, Ed. 1898, p. 34.

[3] Printed, General Acts, Vol. I, Ed. 1898, p. 468.

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Effect of decisions under this Act, and liability of holder of certificate thereunder.

25. No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.

26. (*1*) The Local Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.[1]

(*2*) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court:

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (*1*) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(*3*) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure[2] as applied by section 647 of that Code, be final. XIV of 1882.

(*4*) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(*5*) A notification under sub-section (*1*) may specify any inferior Court specially or any class of such Courts in any local area.

(*6*) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the pur-

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[1] For notifications issued under this sub-section for—
(*1*) Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. 268;
(*2*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. 495-497;
(*3*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 227 and 228;
(*4*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 126.

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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poses of this section be deemed to be a Court inferior in grade to a District Court.

27. (*1*) When a certificate under this Act has been superseded or is invalid from any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

Surrender of superseded and invalid certificates.

(*2*) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

28. Notwithstanding anything in the Regulation of the Bombay Code No. VIII of 1827,[1] the provisions of section 3, section 6, sub-section (*1*), clause (*f*), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26 and 27 of this Act with respect to certificates under this Act and applications therefor, and of section 98 of the Probate and Administration Act, 1881,[2] with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

Provisions with respect to certificates under Bombay Regulation VIII of 1827.

V of 1881.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and year.	Subject or title.	Extent of repeal.
	Acts of the Governor General in Council.	
XXVII of 1860 . .	Collection of debts on successions.	So much as has not been repealed.
[3] XIV of 1869 . . .	Bombay Civil Courts Act, 1869.	In section 16, from and inclusive of the words and figures "Bombay Regulation VIII of 1827" down to and inclusive of the words "representatives of deceased per ons and ".

[1] Printed, Bombay Code, Vol. I, Ed. 1894, p. 11.
[2] Printed, General Acts, Vol. III, p. 339.
[3] Printed, Bombay Code, Vol. I, Ed. 1894, p. 127.

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(The First Schedule.—Enactments Repealed. The Second Schedule.—Forms of Certificate and Extended Certificate.)

THE FIRST SCHEDULE—*concluded.*

Number and year.	Subject or title.	Extent of repeal.
	Acts of the Governor General in Council—concluded.	
[1] XV of 1874 . . .	Laws Local Extent Act, 1874.	So much as relates to Act XXVII of 1860.
[2] XIII of 1879 . .	Oudh Civil Courts Act, 1879.	Section 25, clause (*3*), relating to applications for certificates under Act XXVII of 1860.
[3] V of 1881 . . .	Probate and Administration Act, 1881.	Sections 151 and 153.
[4] XVIII of 1884 . .	Punjab Courts Act, 1884.	Section 29, sub-section (*1*), clause (*a*).
[5] XII of 1887 . . .	Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.	Section 23, sub-section (*2*), clause (*c*).
	Act of the Lieutenant-Governor of Bengal in Council.	
[6] VII of 1880 . . .	Public Demands Recovery Act, 1880.	In section 7, clause (3), the words "and the note to paragraph 12 of Schedule I".

THE SECOND SCHEDULE.

Forms of Certificate and Extended Certificate.

(*See section 11.*)

In the Court of

To *A. B.*

Whereas you applied on the day of for a certificate under the Succession Certificate Act, 1889, in respect of the following debts and securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 483.
[2] Printed, North-Western Provinces and Oudh Code, Ed. 1892, p. 355.
[3] Printed, General Acts, Vol. III, Ed. 1898, p. 339.
[4] *See* the revised edition as modified up to the 1st April, 1891, published by the Legislative Department.
[5] Printed, Assam Code, Ed. 1897, p. 191.
[6] Since entirely repealed by the Public Demands Recovery Act 1895 (Bengal Act, I of 1895), *see* the revised edition as modified up to 1st April, 1897, published by the Legislative Department of the Government of Bengal.

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(The Second Schedule.—Forms of Certificate and Extended Certificate.)

Securities.

Serial number.	Description.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you and empowers you to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of .

District Judge.

In the Court of

On the application of *A. B.* made to me on the day of , I hereby extend this certificate to the following debts and securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest, on date of application for extension.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	Description.			Market-value of security on date of application for extension.
	Distinguishing number or letter of security.	Name, title or class of security.	Amount of par value of security.	

This extension empowers *A. B.* to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of .

District Judge.

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ACT No. VIII OF 1889.[1]

[22nd March, 1889.]

An Act to amend the Sea Customs Act,[2] 1878 * * *.[3]

WHEREAS it is expedient to amend the Sea Customs Act,[2] 1878, * * * *[3]; It is hereby enacted as follows :— VIII of 1878.

Sea Customs Act, 1878.[2]

Amendment of section 37, Act VIII, 1878.

1. For the provisos to section 37 of the Sea Customs Act,[2] 1878, the following proviso shall be substituted, namely :— VIII of 1878.

"Provided that, if such goods are warehoused under this Act, the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date on which application is made to clear such goods from the warehouse for home-consumption."

Amendment of section 115, Act VIII, 1878.

2. In section 115 of the same Act, for the words and figures "the second proviso to section 37" the words "such alteration" shall be substituted.

3—5. [*Amendment of Act XI, 1882.*] *Rep. by the Indian Tariff Act, 1894 (VIII of 1894).*

INDIAN PORTS ACT, 1889.

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[1] Short title, "The Sea Customs Act (1878) Amendment Act, 1889", *see* the Indian Short Titles Act, 1897 (XIV of 1897).

For Statement of Objects and Reasons, *see* Gazette of India, 1889, Pt. V, p. 2; for Report of the Select Committee, *see ibid*, p. 37; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 6, 14 and 60.

The Act is in force in Upper Burma (except the Shan States) as being a portion of the original Act VIII of 1878, declared in force there by the Burma Laws Act, 1898 (XIII of 1898).

[2] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

[3] The words "and the Indian Tariff Act, 1882," in the Title and Preamble and the heading "Indian Tariff Act, 1882," to section 3, have been omitted as the Indian Tariff Act, 1882 (XI of 1882) and ss. 3 to 5 of this Act have been repealed by the Indian Tariff Act, 1894 (VIII of 1894), printed, General Acts, Vol. VI.

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THE SECOND SCHEDULE.—ENACTMENTS REPEALED.

ACT No. X OF 1889.[1]

[*29th March, 1889.*]

An Act to consolidate and amend the law relating to Ports and Port-charges.

WHEREAS it is expedient to consolidate and amend the law relating to ports and port-charges; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, commencement and extent.

1. (*1*) This Act may be called the Indian Ports Act, 1889; and

(*2*) It shall come into force on the first day of April, 1889.

(*3*) It shall extend, save as otherwise appears from its subject or context,—

(*a*) to the ports mentioned in the first schedule, and to such parts of the navigable rivers and channels leading to such ports respectively as have been declared to be subject to Act XXII of 1855[2] (*for the Regulation of Ports and Port-dues*) or to the Indian Ports Act, 1875;[3]

XII of 1875.

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1889, Pt. V, p. 25; for the Report of the Select Committee, *see ibid*, p. 87; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 14, 18 and 111.

[2] Act XXII of 1855 was repealed by Act XII of 1875.

[3] Act XII of 1875 was repealed by s. 2 of this Act.

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(*b*) to the other ports or parts of navigable rivers or channels to which the Local Government, in exercise of the power hereinafter conferred, extends this Act:

(*4*) But nothing in this Act shall—

(*i*) apply to any vessel belonging to, or in the service of, Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State, or

(*ii*) deprive any person of any right of property or other private right, except as hereinafter expressly provided, or

(*iii*) affect any law[1] or rule relating to the customs or any order or direction lawfully made or given pursuant thereto:

(*5*) And nothing in section 31 or section 32 shall apply to any port, river or channel to which the section has not been specially extended by the Local Government.

Repeal.

2. (*1*) The enactments mentioned in the second schedule are hereby repealed to the extent specified in the third column of that schedule.

(*2*) All declarations, appointments, requisitions, orders and rules made, authorizations, directions and permissions given, prohibitions issued and notifications published under any of those enactments or under any enactment repealed by any of them, shall, if in force at the commencement of this Act, be deemed, so far as may be, to have been made, given, issued and published under this Act: and

(*3*) Any enactment or document referring to any such repealed enactment shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "port" includes also any part of a river or channel in which this Act is for the time being in force:

(*2*) "port-officer" is synonymous with master-attendant:

(*3*) "vessel" includes anything made for the conveyance by water of human beings or of property:

(*4*) "master" when used in relation to any vessel, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour-master) having for the time being the charge or control of the vessel:

(*5*) "pilot" means a person for the time being authorized by the Local Government to pilot vessels:

[1] *See* the Sea Customs Act, 1878 (VIII of 1878), printed, General Acts, Vol. III, p. 168.

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(*6*) "ton" means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships: and

(*7*) "Magistrate" means a person exercising powers under the Code of Criminal Procedure, 1882,[1] not less than those of a Magistrate of the second class, and includes, in the towns of Calcutta, Madras and Bombay, a Presidency Magistrate.

X of 1882.

CHAPTER II.

POWERS OF THE LOCAL GOVERNMENT.

Power to extend or withdraw the Act or certain portions thereof.

4. (*1*) With the previous sanction of the Governor General in Council, the Local Government may, by notification in the official Gazette,—

(*a*) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to a port and in which this Act is not in force;[2]

(*b*) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended;[3]

(*c*) withdraw this Act, or section 31 or section 32, from any port or any part thereof in which it is for the time being in force.[4]

(*2*) A notification under clause (*a*) or clause (*b*) of sub-section (*1*) shall define the limits of the area to which it refers.[5]

(*3*) Limits defined under sub-section (*2*) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches, whether

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[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

[2] For notifications under sub-section (*1*) (*a*) issued by the—

(*1*) Government of Bengal, *see* Calcutta Gazette, 1856, pp. 1137 and 1476; *ibid*, 1875, Pt. I, pp. 1149 and 1506; *ibid*, 1858, pp. 575 and 1067. These notifications were issued under corresponding provisions of previous Acts, and are kept in force by s. 2 (*2*) of this Act;

(*2*) Government of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxx;

(*3*) Government of Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 228.

[3] For notifications under sub-section (*1*) (*b*) issued by the—

(*1*) Government of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxx;

(*2*) Chief Commissioner of Burma, *see* Burma Laws List, Ed. 1897, p. 272. These notifications were issued under the corresponding provisions of the previous Acts and are kept in force by s. 2 (*2*) of this Act.

(*3*) Government of Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 228 and 229.

[4] For instance of a notification issued under clause (*c*) of s. 5 of Act XII of 1875, corresponding to clause (*c*), s. 4 (*1*) of this Act, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 228. The notification is kept in force by s. 2 (*2*) of this Act.

In Bengal, for notification withdrawing a port from the operation of s. 31, *see* Calcutta Gazette, 1891, Pt. I, p. 425.

[5] For lists of notifications defining the limits of ports in—

(*1*) Bengal, *see* Calcutta Gazette, 1881, Pt. I, p. 376; *ibid*, 1858, pp. 575 to 576; *ibid*, 1881, Pt. I, pp. 377 to 379; *ibid*, 1884, Pt. I, 1101;

(*2*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxx;

(*3*) Burma, *see* Burma Laws List, Ed. 1897, p. 272.

(*4*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 229 to 231.

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within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark.

(*4*) In sub-section (*3*) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year.

Alteration of limits of ports.

5. (*1*) The Local Government may, with the previous sanction of the Governor General in Council and subject to any rights of private property, alter the limits of any port in which this Act is in force.[1]

(*2*) When the Local Government alters the limits of a port under sub-section (*1*), it shall declare or describe, by notification in the official Gazette, and by such other means, if any, as it thinks fit, the precise extent of such limits.

Power to make port-rules.

6. (*1*) The Local Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely:—[2]

[3](*a*) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which vessels generally, or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act;

(*b*) for regulating the berths, stations and anchorages to be occupied by vessels in any such port;

(*c*) for striking the yards and top-masts, and for rigging-in the booms and yards, of vessels in any such port, and for swinging or taking-in davits, boats and other things projecting from such vessels;

(*d*) for the removal or proper hanging or placing of anchors, spars and other things being in or attached to vessels in any such port;

(*e*) for regulating vessels whilst taking-in or discharging passengers,

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[1] For lists of notifications defining and altering the limits of ports in—
(*1*) Bengal, *see* Calcutta Gazette, 1897, Pt. I, p. 326; *ibid*, 1897, pp. 324 and 1218;
(*2*) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxx;
(*3*) Burma, *see* Burma Laws List, Ed. 1897, p. 272;
(*4*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 229 to 231.

[2] For rules issued under s. 6, for—
(*1*) Bengal Ports, *see* Calcutta Gazette, 1891, Pt. I, p. 391; *ibid*, 1894, Pt. I, p. 1053; *ibid*, 1895, Pt. I, p. 941; *ibid*, 1884, Pt. I, p. 1101; *ibid*, dated 4th June, 1890, Appendix, p. i; *ibid*, 1893, Pt. I, pp. 262 and 949; *ibid*, 1897, Pt. I, p. 290; *ibid*, 1879, Pt. I, p. 130.
(*2*) Bombay Ports, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1898, pp. cxxxi and cxxxii.
(*3*) Madras Ports, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 231 to 234.
(*4*) Burma Ports, *see* Burma Laws List, Ed. 1897, pp. 274 to 276.
(*5*) Special for the port of Tuticorin, *see* Fort St. George Gazette, 1897, Pt. I, p. 828.
(*6*) Rangoon, as to navigation, *see* Burma Gazette, 1898, Pt. I, p. 567.
(*7*) For rules under this section regulating the use of signals by steam whistle in the port of Calcutta, *see* Calcutta Gazette, 1898, Pt. I, p. 894.

[3] This clause was substituted for the original cl. (*a*) by Act V of 1891, s. 1. For saving of past rules respecting the moving of vessels in ports, *see ib.*, s. 2. The original clause was as follows:—"(*a*) for regulating the time at which, and the manner in which, vessels are to enter or leave any port subject to this Act."

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ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged;

(*f*) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing-places, wharves, quays, docks, moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free;

(*g*) for regulating the anchoring, fastening, mooring and unmooring of vessels in any such port;

(*h*) for regulating the moving and warping of all vessels within any such port and the use of warps therein:

(*i*) for regulating the use of the mooring buoys, chains and other moorings in any such port;

(*j*) for fixing the rates to be paid for the use of such moorings when belonging to the Government, or of any boat, hawser or other thing belonging to the Government;

(*k*) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not and whether regularly or only occasionally, in or partly within and partly without, any such port, and for determining the quantity of cargo or number of passengers to be carried by any such vessels;

(*l*) for regulating the use of fires and lights within any such port;

(*m*) for enforcing and regulating the use of signals or signal-lights by vessels by day or by night in any such port;

(*n*) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port;

(*o*) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels, in any such port;* [1]

[2](*p*) for regulating the action to be taken by a master where there is disease or sickness, or a dead body, on board his vessel in any such port; [3] [and]

(*q*) for securing the protection from heat of the officers and crew of vessels in any such port by requiring the owner or master of any such vessel—

(*i*) to provide curtains and double awnings for screening from the

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[1] The word "and" was repealed by the Indian Ports Act (1889) Amendment Act, 1896 (IV of 1896), printed, General Acts, Vol. VI, Ed. 1898.

[2] For rules under this clause for the port of Calcutta, *see* Calcutta Gazette, 1890, Pt. I, p. 740; *ibid*, 1897, Pt. I, p. 483.

[3] The word "and" and cl. (*q*) were added by the Indian Ports Act (1889) Amendment Act, 1896 (IV of 1896), s. 1. For rules under cl. (*q*) for the port of Calcutta, *see* Calcutta Gazette, 1898, Pt. I, p. 132.

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sun's rays such portions of the deck as are occupied by, or are situated immediately above, the quarters of the officers and crew;

(*ii*) to erect windsails so far as the existing port-holes or apertures in the deck admit of their being used for ventilating the quarters of the officers and crew;

(*iii*) when the deck is made of iron and not wood-sheathed, to cover with wooden planks or other suitable non-conducting material such portions of the deck as are situated immediately above the quarters of the officers and crew;

(*iv*) when the quarters used by the crew and the galley are separated by an iron bulkhead only, to furnish a temporary screen of some suitable non-conducting material between such quarters and the galley.

(*2*) The power to make rules under sub-section (*1*) is subject to the condition of the rules being made after previous publication:

Provided that nothing in this sub-section shall be construed to affect the validity of any rule in force immediately before the commencement of this Act and continued by section 2, sub-section (*2*).

CHAPTER III.

Port-officials and their Powers and Duties.

Appointment of conservator.

7. (*1*) The Local Government shall appoint some officer or body of persons to be conservator of every port subject to this Act, and may suspend or remove such officer or body.[1]

(*2*) Subject to any direction by the Local Government to the contrary,—

(*a*) in ports where there is a port-officer, the port-officer shall be the conservator;

(*b*) in ports where there is no port-officer, but where there is a harbour-master, the harbour-master shall be the conservator.

(*3*) Where the harbour-master is not conservator, the harbour-master and his assistants shall be subordinate to, and subject to the control of, the conservator.

[1] For notifications appointing conservators for ports in—
(*1*) the Bengal Presidency, *see* Calcutta Gazette, 1876, Pt. I, p. 1281; *ibid*, 1883, Pt. I, p. 776; *ibid*, 1889, Pt. I, p. 304;
(*2*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxiii;
(*3*) the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 235;
(*4*) Burma, *see* Burma Laws List, Ed. 1897, pp. 277 and 278.

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(*4*) The conservator shall be subject to the control of the Local Government, or of any intermediate authority which that Government may appoint.[1]

8. (*1*) The conservator of any port subject to this Act may, with respect to any vessel within the port, give directions for carrying into effect any rule for the time being in force therein under section 6.

Power of conservator to give and enforce directions for certain specified purposes.

(*2*) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punished with fine which may extend to one hundred rupees, and with further fine which may extend to one hundred rupees for every day on which, after such notice as aforesaid, he wilfully and without lawful excuse continues to disobey the direction.

(*3*) In case of such refusal or neglect, the conservator may do, or cause to be done, all acts necessary for the purpose of carrying the direction into execution, and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

9. The conservator of any such port may, in case of urgent necessity, cut or cause to be cut, any warp, rope, cable or hawser endangering the safety of any vessel in the port or at or near to the entrance thereof.

Power to cut warps and ropes.

10. (*1*) The conservator may remove, or cause to be removed, any timber, raft or other thing, floating or being in any part of any such port, which in his opinion obstructs or impedes the free navigation thereof or the lawful use of any pier, jetty, landing-place, wharf, quay, dock, mooring or other work on any part of the shore or bank which has been declared to be within the limits of the port and is not private property.

Removal of obstructions within limits of port.

(*2*) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punished with fine which may extend to one hundred rupees.

(*3*) The conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated.

11. If the owner of any such timber, raft or other thing, or the person who has caused any such obstruction, impediment or public nuisance as is

Recovery of expenses of removal.

[1] For notification appointing intermediate authorities at all ports in—
(*1*) the Bombay Presidency, except Bombay, Aden and the Ports in Sindh, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxiii;
(*2*) Burma, *see* Burma Gazette, 1894, Pt. I, p. 370.

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mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the official Gazette or in such other manner as the Local Government by general or special order directs, the conservator may cause such timber, raft or other thing, or the materials of any public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction ;

and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same ;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the Local Government directs ;

and may, if necessary, from time to time, realize the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

Removal of lawful obstructions.

12. (*1*) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the conservator shall report the same for the information of the Local Government, and shall, with the sanction of that Government, cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.

(*2*) Any dispute arising concerning such compensation shall be determined according to the law [1] relating to like disputes in the case of land required for public purposes.

Fouling of Government moorings.

13. (*1*) If any vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the Local Government in any such port, the master of such vessel shall not, nor shall any other person, except in case of emergency, lift the buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the conservator ;

and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel ;

and the master of such vessel shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same.

(*2*) Any master or other person offending against the provisions of this section shall, for every such offence, be punished with fine which may extend to one hundred rupees.

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[1] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI, Ed. 1898.

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Raising or removal of wreck impeding navigation within limits of port.

14. (*1*) If any vessel is wrecked, stranded or sunk in any such port so as to impede, or be likely to impede, the navigation thereof, the conservator may cause the vessel to be raised, removed or destroyed.

(*2*) If any property recovered by a conservator acting under sub-section (*1*) is unclaimed, or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent. of the amount of such expenses, the conservator may sell the property by public auction, if the property is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after the recovery thereof.

(*3*) The expenses and further sum aforesaid shall be payable to the conservator out of the sale-proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto:

Provided that the person makes his claim within three years from the date of the sale.

Power to board vessels and enter buildings.

15. (*1*) The conservator or any of his assistants may, whenever he suspects that any offence against this Act has been, or is about to be, committed, or whenever it is necessary for him so to do in the preformance of any duty imposed upon him by this Act,

and the person appointed under this Act to receive any port-dues, fees or other charges payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

(*2*) If the master of the vessel, or any person in possession or occupation of the building or place, without lawful excuse, refuses to allow any such person as is mentioned in sub-section (*1*) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall for every such offence be punished with fine which may extend to two hundred rupees.

Power to require crews to prevent or extinguish fire.

16. (*1*) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port-officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such master.

(*2*) Any master refusing or neglecting to comply with such requisition shall be punished with fine which may extend to five hundred rupees, and any

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seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punished with fine which may extend to twenty-five rupees.

Appointment and powers of health-officer.

17. (*1*) The Local Government may appoint at any port subject to this Act an officer to be called the health-officer, and may suspend or remove from office any officer so appointed.

(*2*) A health-officer shall, subject to the control of the Local Government, have the following powers within the limits of the port for which he is appointed, namely :—[1]

(*a*) with respect to any vessel, the powers conferred on a shipping-master by Act I of 1859, section 71 ;[2]

(*b*) power to enter on board any vessel and medically examine all or any of the seamen or apprentices on board the vessel ;

(*c*) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board the vessel ;

(*d*) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask ;

(*e*) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

Indemnity of Government against act or default of port-official or pilot.

18. The Government shall not be responsible for any act or default of any conservator, port-officer or harbour-master of any port subject to this Act, or of any deputy or assistant of any of the authorities aforesaid, or of any person acting under the control or direction of any such authority, deputy or assistant, or for any act or default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Government which may be used by the vessel :

Provided that nothing in this section shall protect the Secretary of State for India in Council from a suit in respect of any act done by or under the express order or sanction of the Government.

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[1] For notifications appointing Health-officers for ports in—
(*1*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 235 ;
(*2*) Burma, *see* Burma Gazette, 1894, Pt. I, p. 261.

[2] The Indian Merchant Shipping Act, 1859, printed, General Acts, Vol. I, Ed. 1898, p. 167.

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CHAPTER IV.

RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS.

General Rules.

Injuring buoys, beacons and moorings.

19. (*1*) No person shall, without lawful excuse, lift, injure, loosen or set adrift any buoy, beacon or mooring fixed or laid down by, or by the authority of, the Local Government in any port subject to this Act.

(*2*) If any person offends against the provisions of this section, he shall for every such offence he liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

Wilfully loosening vessel from moorings.

20. If any person wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

Improperly discharging ballast.

21. (*1*) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port either by ordinary or high tides, or by storms or land-floods.

(*2*) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing, and the master of any vessel from which the same is so cast or thrown, shall be punished with fine which may extend to five hundred rupees, and shall pay any reasonable expenses which may be incurred in removing the same.

(*3*) If, after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing, any master continues so to cast or throw it, he shall also be liable to simple imprisonment for a term which may extend to two months.

(*4*) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is cast or thrown into any such port with the consent in writing of the conservator, or within any limits within which such act may be authorized by the Local Government.

Graving vessel within prohibited limits.

22. If any person graves, breams or smokes any vessel in any such port, contrary to the directions of the conservator, or at any time or within any limits at or within which such act is prohibited by the Local Government, he

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and the master of the vessel shall for every such offence be punished with fine which may extend to five hundred rupees each.

Boiling pitch on board vessel within prohibited limits.

23. If any person boils or heats any pitch, tar, resin, dammer, turpentine, oil or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the Local Government,[1] or contrary to the directions of the conservator, he and the master of the vessel shall for every such offence be punished with fine which may extend to two hundred rupees each.

Drawing spirits by unprotected artificial light.

24. If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, he and the master of the vessel shall for every such offence be punished with fine which may extend to two hundred rupees each.

Warping.

25. (*1*) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do.

(*2*) A master offending against sub-section (*1*) shall be punished for every such offence with fine which may extend to two hundred rupees.

Leaving out warp or hawser after sunset.

26. (*1*) A master of a vessel shall not cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act after sunset in such a manner as to endanger the safety of any other vessel navigating in the port.

(*2*) A master offending against sub-section (*1*) shall be punished for every such offence with fine which may extend to two hundred rupees.

Discharge of fire-arms in port.

27. If any person, without lawful excuse, discharges any fire-arms in any port subject to this Act, or on or from any pier, landing-place, wharf or quay thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purpose as may be allowed by the Local Government, he shall for every such offence be punished with fine which may extend to fifty rupees.

Penalty on master omitting to take order to extinguish fire.

28. If the master of any vessel in which fire takes place while lying in any such port wilfully omits to take order to extinguish the fire or obstructs the conservator or the port-officer, or any person acting under the authority of the conservator or port-officer, in extinguishing or attempting to extinguish the fire, he shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[1] For instance of a notification issued under s. 23, *see* Burma Gazette, 1891, Pt. I, p. 6.

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29. (*1*) No person, without the permission of the conservator, shall in any port subject to this Act creep or sweep for anchors, cables or other stores lost or supposed to be lost therein.

Unauthorized person not to search for lost stores.

(*2*) If any person offends against the provisions of sub-section (*1*), he shall be punished with fine which may extend to one hundred rupees.

30. (*1*) No person without the permission of the conservator shall in any port subject to this Act remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port;

Removing stones or injuring shores of port prohibited.

and no person shall sink or bury in any part of such bank or shore, whether the same is public or private property, any mooring post, anchor or any other thing, or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(*2*) If any person offends against sub-section (*1*), he shall for every such offence be punished with fine which may extend to one hundred rupees and shall pay any reasonable expenses which may be incurred in repairing any injury done by him to the bank or shore.

Special Rules.

31. (*1*) No vessel of the measurement of two hundred tons or upwards shall enter, leave or be moved in any port to which this section has been specially extended without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board;

Moving of vessels without pilot or permission of harbour-master.

and no vessel of any measurement less than two hundred tons and exceeding one hundred tons shall enter, leave or be moved in any such port without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board, unless authority in writing so to do has been obtained from the conservator or some officer empowered by him to give such authority.

(*2*) If any vessel, except in case of urgent necessity, enters, leaves or is moved in the port contrary to the provisions of sub-section (*1*), the master of the vessel shall for every such offence be punished with fine which may extend to two hundred rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour-master to go on board the vessel.

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(*3*) Nothing in sub-sections (*1*) and (*2*) shall apply to Native vessels when they are entering, leaving or being moved in the port of Bombay.

(*4*) If any question arises as to whether any vessel is a Native vessel within the meaning of this section, the decision thereon of such authority as the Governor of Bombay in Council may appoint in this behalf shall be conclusive.

Provision of certain vessels with fire-extinguishing apparatus.

32. (*1*) Every vessel exceeding the measurement of two hundred tons and lying in any port to which this section has been specially extended shall be provided with a proper force-pump and hose and appurtenances, for the purpose of extinguishing any fire which may occur on board.

(*2*) The master of such a vessel who, having been required by the conservator to comply with the provisions of sub-section (*1*), neglects, or refuses without lawful excuse, so to do for the space of seven days after such requisition, shall be punished with fine which may extend to five hundred rupees.

CHAPTER V.

PORT-DUES, FEES AND OTHER CHARGES.

Levy of port-dues.

33. (*1*) In each of the ports mentioned in the first schedule such port-due, not exceeding the amount specified for the port in the third column of the schedule as the Local Government directs,[1] shall be levied on vessels entering the port and described in the second column of the schedule, but not oftener than the time fixed for the port in the fourth column of the schedule.

(*2*) Whenever the Local Government, with the previous sanction of the Governor General in Council, declares any other port to be subject to this Act, it may, with the like sanction, by the same or any subsequent declaration, further declare,—

(*a*) in the terms of any of the entries in the second column of the first schedule, the vessels which are to be chargeable with port-dues on entering the port,

(*b*) the highest rates at which such dues may be levied in respect of vessels chargeable therewith, and

(*c*) the times at which such vessels are to be so chargeable.

[1] For notifications fixing such rates for ports in—
(*1*) Bengal, *see* Calcutta Gazette, 1892, Pt. I, p. 878; *ibid*, 1881, Pt. I, pp. 375, 376 and 379; *ibid*, 1890, Pt. I, p. 699; *ibid*, 1893, Pt. I, p. 131; *ibid*, 1894, Pt. I, p. 1245;
(*2*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxiii;
(*3*) the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 235;
(*4*) Burma, *see* Burma Laws List, Ed. 1897, p. 278.

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(*3*) All port-dues now leviable in any port shall continue to be so leviable until it is otherwise declared in exercise of the powers conferred by this section.

(*4*) An order increasing or imposing port-dues under this section shall not take effect till the expiration of sixty days from the day on which the order was published in the local official Gazette.

Variation of port-dues by Local Government.

34. The Local Government may exempt[1] the vessels entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be levied in the port, in such manner as, having regard to the receipts and charges on account of the port, it thinks expedient, by reducing or raising the dues, or any of them :

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.

Fees for pilotage and certain other services.

35. (*1*) Within any port subject to this Act, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Local Government may direct :[2]

Provided that, in the case of fees for pilotage, the previous sanction of the Governor General in Council has been obtained.

(*2*) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (*1*).

Receipt, expenditure and account of port-charges.

36. (*1*) The Local Government shall appoint some officer or body of persons at every port at which any dues, fees or other charges are authorized to be taken by or under this Act to receive the same and, subject to the control of the Local Government, to expend the receipts on any of the objects authorized by this Act.[3]

(*2*) Such officer or body shall keep for the port a distinct account, to be called the port fund account, showing, in such detail as the Local Government prescribes, the receipts and expenditure of the port, and shall publish annually as soon after the first day of April as may be practicable an abstract

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[1] For instances exempting vessels from the payment of port-dues, *see* Fort St. George Gazette, 1898, Pt. I, p. 695, Burma Gazette, 1892, Pt. I, p. 57, and Calcutta Gazette, 1893, Pt. I, p. 131; *ibid*, 1894, Pt. I, p. 1245.

[2] For notifications prescribing fees for services mentioned in this section in ports in—

(*1*) Bengal, *see* Calcutta Gazette, 1897, Pt. I, p. 602; *ibid*, 1884, Pt. I, p. 1101; *ibid*, 1889, Pt. I, p. 199 and *ibid*, 1894, Pt. I, p. 1245; *ibid*, 1878, p. 182;

(*2*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxiv;

(*3*) the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 235 and 236;

(*4*) Burma, *see* Burma Laws List, Ed. 1897, pp. 278 and 280.

[3] For notifications—

(1) appointing persons to collect dues, etc., in certain ports in (*a*) the Bengal Presidency, *see* Calcutta Gazette, 1890, Pt. I, p. 677; *ibid*, 1889, pp. 397, 595 and 691; *ibid*, 1890, Pt. I, p 64; and (*b*) in the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. cxxxiv and cxxxv;

(*2*) as to disposal of group dues levied at certain ports in the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1896, p. 236.

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in such form as that Government prescribes, of the account for the past financial year.

(3) If, for any of the purposes of this Act, an advance of money has been or shall be made by the Government on account of any port subject to this Act, simple interest upon that advance, or upon so much of it as remains or shall remain unrepaid, at such rate as the Governor General in Council may determine, shall be charged in the port fund account of the port.

(4) All moneys received under this Act at or on account of any port subject to this Act, excluding receipts on account of pilotage but including—

(a) fines,

(b) proceeds of waifs, and

(c) any balance of the proceeds of a sale under section 14 where no right to the balance has been established on a claim made within three years from the date of the sale,

shall be credited in the port fund account of the port.

(5) All expenses incurred for the sake of any such port, excluding expenses on account of pilotage but including—

(a) the pay and allowances of all persons upon the establishment of the port,

(b) the costs of buoys, beacons, lights and all other works maintained chiefly for the benefit of vessels being in or entering or leaving the port or passing through the rivers or channels leading thereto,

(c) pensions, allowances and gratuities of persons who have been employed in the port under this or any other enactment relating to ports and port-dues, or such portion of those pensions, allowances and gratuities as the Local Government may by rule determine,

(d) with the previous sanction of the Local Government, contributions towards the support of public hospitals or dispensaries suitable for the reception or relief of seamen or otherwise towards the provision of sanitary superintendence [1] and medical aid for the shipping in the port and for seamen, whether ashore or afloat, belonging to vessels in the port, and,

(e) with the like sanction, contributions towards sailors' homes, institutes, rest-houses and coffee-houses and for other purposes connected with the health, recreation and temporal well-being of sailors,

shall be charged to the port fund account of the port.

[1] For notification making provision as to maintenance of office of Health-officer for the Port of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxv; for notification directing the levy of hospital port-dues in the Port of Calcutta, *see* Calcutta Gazette, 1886, Pt. I, p. 994.

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(*6*) Subject to the provisions of any local law as to the disposal of any balance from time to time standing to the credit of a port fund account, any such balance may be temporarily invested in such manner as the Local Government may direct.

Grouping of ports.

37. (*1*) The Local Government may direct that for the purposes of the last foregoing section any number of ports shall be regarded as constituting a single port, and thereupon all moneys to be credited to the port fund account under sub-section (*1*) of that section shall form a common port fund account which shall be available for the payment of all expenses incurred for the sake of any of the ports :

Provided, with respect to the ports of Calcutta, Madras, Bombay, Rangoon, Karachi, Chittagong and Aden, that none of those ports may be grouped with any other port, and that the port fund account of each of those ports shall be kept separate from the port fund account of any other port.

(*2*) Where ports are grouped by or under this Act, the following consequences ensue, namely :—

(*a*) the Local Government, in the exercise of its control over expenditure debitable to the common port fund account of the group, may, with the previous sanction of the Governor General in Council, make rules with respect to the expenditure of the fund for the sake of the several ports of the group on the objects authorized by this Act, and shall cause effect to be given to any directions which the Governor General in Council may deem it necessary to issue with respect to such expenditure ; and

(*b*) the Local Government may exercise its authority under section 34 as regards all the ports in the group collectively or as regards any of them separately.

Receipts for port-charges.

38. The person to whom any dues, fees or other charges authorized to be taken by or under this Act are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the dues, fees or other charges are paid, and the name, tonnage and other proper description of the vessel in respect of which the payment is made.

Master to report arrival.

39. (*1*) Within twenty-four hours after the arrival within the limits of any port subject to this Act of any vessel liable to the payment of port-dues under this Act the master of the vessel shall report her arrival to the conservator of the port.

(*2*) A master failing without lawful excuse to make such report within the

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time aforesaid shall for every such offence be punished with fine which may extend to one hundred rupees.

(*3*) Nothing in this section applies to tug-steamers, ferry-steamers or river-steamers plying to and from any of the ports subject to this Act or to ballam boats plying to and from the port of Chittagong.

Conservator may in certain cases ascertain draught and charge expense to master.

40. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern posts thereof for denoting her draught, the conservator may cause the same to be ascertained by means of the operation of hooking, and the master of the vessel shall be liable to pay the expenses of the operation.

Ascertainment of tonnage of vessel liable to port-dues.

41. In order to ascertain the tonnage of any vessel liable to pay port-dues the following rules shall be observed :—

(*1*) (*a*) If the vessel is a British registered vessel or a vessel registered under Act X of 1841[1] or Act XI of 1850,[1] or under any other law for the time being in force for the registration of vessels in British India, the conservator may require the owner or master of the vessel or any person having possession of her register to produce the register for inspection.

(*b*) If the owner or master or such person neglects or refuses to produce the register or otherwise to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be ascertained, according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, and in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.

(*2*) If the vessel is not a British registered vessel or a vessel registered under Act X of 1841 [1] or Act XI of 1850,[1] or under any other law for the time being in force for the registration of vessels in British India, and the owner or master thereof fails to satisfy the conservator as to what is her true tonnage according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, the conservator shall cause the vessel to be measured and the tonnage thereof to be ascertained, according to the mode aforesaid, and in such

[1] Printed, General Acts, Vol. I, Ed. 1898, pp. 19 and 59, respectively.

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case the owner or master of the vessel shall be liable to pay the expenses of the measurement.

(*3*) If the vessel is a vessel of which the tonnage cannot be ascertained according to the mode of measurement mentioned in clauses (*1*) and (*2*), the tonnage of the vessel shall be determined by the conservator on such an estimate as may seem to him to be just.

Distraint and sale on refusal to pay port-charges.

42. If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle, apparel and furniture belonging thereto or any part thereof, and detain the same until the amount due is paid;

and in case any part of the port-dues, fees or other charges, or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested, remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, fees or other charges and the costs, including the costs of sale, remaining unpaid, and shall render the surplus, if any, to the master of the vessel upon demand.

No port-clearance to be granted until port-charges are paid.

43. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such clearance—

(*a*) until her owner or master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and other charges, and of all fines, penalties and expenses to which the vessel or her owner or master is liable under this Act;

17 & 18 Vict., c. 104.

(*b*) until all expenses, which by the Merchant Shipping Act, 1854, section 228,[1] are to be borne by her owner, incurred since her arrival in the port from which he seeks clearance, have been paid.

Port-charges payable in one port recoverable at any other port.

44. (*1*) If the master of any vessel in respect of which any such sum as is mentioned in the last foregoing section is payable causes her to leave any port without having paid the sum, the authority appointed to receive port-dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port-dues, fees and other charges

[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 209.

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under this Act at any other port in British India to which she may proceed, or in which she may be, to levy the sum.

(*2*) The authority to whom the requisition is directed shall proceed to levy such sum in the manner prescribed in section 42, and a certificate purporting to be made by the authority appointed to receive port-dues, fees and other charges at the port where such sum as is mentioned in the last foregoing section became payable, stating the amount payable, shall be sufficient *primâ facie* proof of such amount in any proceeding under section 42, and also (in case the amount payable is disputed) in any subsequent proceeding under section 59.

Penalty for evading payment of port-charges.

45. (*1*) If the master of a vessel evades the payment of any such sum as is mentioned in section 43, he shall be punished with fine which may extend to five times the amount of the sum.

(*2*) In any proceeding before a Magistrate on a prosecution under sub-section (*1*), any such certificate as is mentioned in section 44, sub-section (*2*), stating that the master has evaded such payment, shall be sufficient *primâ facie* proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

(*3*) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

Port-due on vessels in ballast.

46. A vessel entering any port subject to this Act (other than a port in Burma) in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Local Government [1] and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

Port-due on vessels not discharging or taking in cargo.

47. When a vessel enters a port subject to this Act, but does not discharge or take in any cargo or passenger or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be

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For notifications issued under this power by—
(*1*) the Government of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxv;
(*2*) the Government of Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 237, and Fort St. George Gazette, 1898, Pt. I, p. 696.

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determined by the Local Government and not exceeding half the rate with which she would otherwise be chargeable :[1]

Provided that a vessel entering any of the ports within the territories administered by the Governor of Fort Saint George in Council and leaving the same within forty-eight hours, without discharging or taking in any passengers or cargo, shall not be charged with any port-due.

Port-due not chargeable on pleasure-yachts or on vessels re-entering from stress of weather.

48. No port-due shall be chargeable in respect of any pleasure-yacht, nor shall any such due be chargeable in respect of any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage.

Power to impose hospital port-dues.

49. (*1*) The Local Government may, by notification in the official Gazette, order that there shall be paid in respect of every vessel entering any port subject to this Act, within a reasonable distance of which there is a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Local Government thinks fit.

(*2*) Such port-dues shall be called hospital port-dues, and the Local Government shall, in making any order under sub-section (*1*), have regard to any contributions made under section 36, sub-section (*5*), clause (*d*).

(*3*) An order imposing or increasing hospital port-dues shall not take effect till the expiration of sixty days from the day on which the order was published in the local official Gazette.

(*4*) Whenever the Local Government is satisfied that proper provision has been made by the owners or agents of any class of vessels for giving medical aid to the seamen employed on board such class of vessels, or that such provision is unnecessary in the case of any class of vessels, it may, by notification in the official Gazette, exempt such class of vessels from any payment under this section.

(*5*) The Local Government may, by notification in the official Gazette, cancel any order under sub-section (*1*) or withdraw any exemption under sub-section (*4*).

Application and account of hospital port-dues.

50. (*1*) Hospital port-dues shall be applied, as the Local Government may direct, to the support of any such hospital or dispensary as aforesaid, or

[1] For notifications issued under s. 47 by—
(*1*) the Government of Bengal, *see* Calcutta Gazette, 1889, Pt. I, p. 968 ;
(*2*) the Government of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxv
(*3*) the Government of Burma, *see* Burma Gazette, 1892, Pt. I, p. 57 ;
(*4*) the Government of Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 237, and Fort St. George Gazette, 1898, Pt. I, p. 697.

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otherwise for providing sanitary superintendence and medical aid for the shipping in the port in which they are levied and for the seamen belonging to the vessels therein, whether such seamen are ashore or afloat.

(*2*) The Local Government shall publish annually in the official Gazette, as soon after the first day of April as may be, an account, for the past financial year, of the sums received as hospital port-dues at each port where such dues are payable, and of the expenditure charged against those receipts.

(*3*) Such account shall be published as a supplement to the abstract published under section 36, sub-section (*2*).

CHAPTER VI.

Hoisting Signals.

Master to hoist number of vessel.

51. (*1*) The master of every inward or outward bound vessel, on arriving within signal-distance of any signal-station established within the limits of the river Hooghly, or within the limits of any part of a river or channel leading to a port subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

(*2*) If the master of a vessel arriving as aforesaid offends against sub-section (*1*), he shall be punished for every such offence with fine which may extend to one thousand rupees.

Pilot to require master to hoist number.

52. (*1*) Every pilot in charge of a vessel shall require the number of the vessel to be duly signalled as provided by the last foregoing section.

(*2*) When, on such requisition from the pilot, the master refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot may, on arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has been complied with.

Penalty on pilot disobeying provisions of this Chapter.

53. Any pilot in charge of a vessel who disobeys, or abets disobedience to, any of the provisions of this Chapter shall be punished with fine which may extend to five hundred rupees for each instance of such disobedience or abetment, and in addition shall be liable to have his authority to act as a pilot withdrawn.

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CHAPTER VII.

PROVISIONS WITH RESPECT TO PENALTIES.

54. If any person disobeys any rule or order which a Local Government has made in pursuance of this Act and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punished for every such offence with fine which may extend to one hundred rupees.

Penalty for disobedience to rules and orders of the Local Government.

55. All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the owner or master of any vessel, for any offence committed on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted, to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Offences how triable, and penalties how recovered.

56. (*1*) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

Costs of conviction.

(*2*) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act.

57. (*1*) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate, upon application made to him for that purpose by either of the disputing parties.

Ascertainment and recovery of expenses and damages payable under this Act.

(*2*) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment recover the sum as if it were a fine.

58. Whenever any fine, expenses or damages is or are levied under this Act by distress and sale, the costs of the distress and sale may be levied in addition to such fine, expenses or damages, and in the same manner.

Costs of distress.

59. If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied

Magistrate to determine the amount to be levied in case of dispute.

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has been determined by a Magistrate, who, upon application made to him for that purpose, may determine the amount, and award such costs to be paid by either of the parties to the other of them as he thinks reasonable, and payment of such costs, if not paid on demand, shall be enforced as if they were a fine.

Jurisdiction over officers beyond local limits of jurisdiction.

60. (*1*) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port.

(*2*) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

Conviction to be quashed on merits only.

61. (*1*) No conviction, order or judgment of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state, on the face of the conviction, order or judgment, the evidence on which it proceeds.

(*2*) If no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in the depositions.

CHAPTER VIII.

Supplemental Provisions.

Hoisting unlawful colours in port.

62. (*1*) If any vessel belonging to any of Her Majesty's subjects, or sailing under British colours, hoists, carries or wears, within the limits of any port subject to this Act, any flag, jack, pennant or colours, the use whereof on board such vessel has been prohibited by the Merchant Shipping Act, 1854,[1] or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in pursuance of any such Statute, or by any of Her Majesty's regulations in force for the time being, the master of the vessel shall, for every such offence, be punished with fine which may extend to fifty rupees. 17 & 18 Vict., c. 104.

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[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

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(*2*) Such fine shall be in addition to any other penalty recoverable in respect of such an offence.

(*3*) The conservator of the port, or any officer of Her Majesty's Navy or Indian Marine Service, may enter on board any such vessel and seize and take away any flag, jack, pennant or colours so unlawfully hoisted, carried or worn on board the same.

Foreign deserters.

63. Any Magistrate, upon an application being made to him by the Consul of any Foreign Power to which the Merchant Shipping Act, 1854,[1] has by an order of Her Majesty in Council been, or shall hereafter be declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any vessel of such Foreign Power, may, until a revocation of such Order in Council has been publicly notified, issue his warrant for the apprehension of any such deserter, and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs, or, at the instance of the Consul, to be detained in custody until the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month :

17 & 18 Vict., c. 104.

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during the detention, and that the detention of the deserter shall not be continued beyond twelve weeks.

Application of sections 10 and 21.

64. (*1*) The provisions of sections 10 and 21 shall be applicable to all ports heretofore or hereafter declared by the Local Government to be ports for the shipment and landing of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

(*2*) Any penalties imposed by him, and any expenses incurred by his order under the said provisions, shall be recoverable respectively in the manner provided in sections 55 and 57.

(*3*) In any of the said ports for the shipment and landing of goods the consent referred to in section 21, sub-section (*4*), may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the Local Government.

Application of Maulmain and Bassein port-dues.

65. The port-due leviable under this Act in either of the ports of Maulmain and Bassein shall, to the extent of one anna and six pie per ton, be applicable in the first place to defray the expenses of maintaining the existing port-lights of Burma.

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[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

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Validation of irregular contributions.

66. Any money contributed before the passing of this Act from any port fund for any purpose connected with the health, recreation and well-being of sailors shall be deemed to have been lawfully contributed from the fund.

Grant of sites for sailors' institutes.

67. Any local authority in which any immoveable property in or near a port is vested may, with the previous sanction of the Local Government, appropriate and either retain and apply, or transfer by way of gift or otherwise, the whole or any part of the property as a site for, or for use as, a sailors' home or other institution for the health, recreation and temporal well-being of sailors.

Exercise of powers of conservator by his assistants.

68. (1) All acts, orders or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any harbour-master or any deputy or assistant[1] of such conservator or harbour-master.

(2) Any person authorized by this Act to do any act may call to his aid such assistance as may be necessary.

Service of written notices of directions.

69. Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

Publication of orders of Local Government.

70. Every declaration, order and rule of a Local Government made in pursuance of this Act shall be published in the official Gazette, and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

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[1] In the Bombay Presidency officers in charge of customs-houses have been appointed assistants to conservators at each of the ports, *see* Bombay Government Gazette, 1878, Pt. I, p. 91. The notification issued under the Ports Act, 1875 (XII of 1875), and is kept in force by s. 2 of this Act.

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THE FIRST SCHEDULE.

PORTS, VESSELS CHARGEABLE, RATE OF PORT-DUES AND FREQUENCY OF PAYMENT.

(*See sections 1 and 33.*)

PART I.—BENGAL.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel
1	2		4
Calcutta . .	Sea-going vessels of twenty tons and upwards.	Not exceeding four annas per ton: provided that, in the case of dhonis and country vessels employed in the coasting trade, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port, except in the case of dhonis and country vessels employed in the coasting trade, which shall not be chargeable with port-dues at the same port more than once in sixty days.
	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Chittagong . .	Sea-going vessels of ten tons and upwards, not being ballam-boats.	Not exceeding four and a half annas per ton.	Whenever the vessel enters the port, except in the case of mail-steamers and coasting vessels, which shall not be chargeable more than once in sixty days.
	Tug-steamers and river-steamers.	Ditto . . .	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
	Ballam-boats .	Not exceeding one anna per ton.	Whenever the vessel enters the port.

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART I.—BENGAL.—*concluded.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Cuttack Ports,—namely, False Point and Pooree.	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Whenever the vessel enters any one of the ports, except in the case of mail-steamers and coasting vessels, which shall not be chargeable more than once in sixty days.
Balasore Ports,—namely, Balasore, Chúráman, Laichhunpur, Chánua, Subarnarekha, Dhamra (Chandbally) and Sartha.	Ditto . .	Ditto . . .	[1] [Whenever the vessel enters any one of the ports, except in the case of mail-steamers and coasting vessels, which shall not be chargeable more than once in thirty days.]

PART II.—MADRAS PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Madras . .	Sea-going vessels of fifteen tons and upwards.	*Foreign Vessels.* (*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements or Ceylon, calling at Madras, not exceeding four annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again.
		(*b*) In the case of any other foreign ship or steamer calling at Madras, not exceeding four annas a ton.	The due is payable on each entry into the port.
		Coasting Vessels. (*c*) In the case of a coasting ship calling at Madras, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.
		(*d*) In the case of a coasting steamer calling at Madras, not exceeding three annas a ton.	The due is payable once in thirty days.

[1] These words were substituted for the word "ditto" by the Indian Ports Act (1889) Amendment Act, 1894 (II of 1894), printed, General Acts, Vol. VI.

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY—*continued.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
Eastern Group.				
District.	Port.		*Foreign Vessels.*	
Ganjam.	1. Gopálpur.	Sea-going vessels of fifteen tons and upwards.	(*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	2. Sonnápuram.			
	3. Baruva.			
	4. Púndi.			
	5. Calingapatam.			
Vizagapatam.	6. Konada.			
	7. Bimlipatam.			
	8. Vizagapatam.			
	9. Pudimadaka.			
	10. Pentakota.		(*b*) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
Godavari.	11. Uppada.			
	12. Cocanada.			
	13. Coringa.			
	14. Bendamurlanka.			
	15. Narsapur.			
	16. Perupalem.		(*c*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
Kistna.	17. Masulipatam.			
	18. Penumudi.			
	19. Morutota.			
	20. Nagayalanka.			
	21. Kottapalem.			
	22. Gangadipalem.			
	23. Nizampatnam.			
	24. Ipurupalem.			
	25. Budduvanipalem.		(*d*) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	26 Motupalle.			
Nellore.	27. Kanuparti.			
	28. Kottapatnam.			
	29. Itamukkala.			
	30. Pakala.			
	31. Karidu.			
	32. Ramayapatnam.			
	33. Chennayyapalem.		*Coasting Vessels.*	
	34. Tummalapenta.		(*e*) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	35. Juvaladinne.			
	36. Iskapallee.			
	37. Punnapudi.			
	38. Maipadu.			
	39. Kistnapatam.			
	40. Pamanji.		(*f*) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	41. Tupili.			
	42. Dugarazpatnam.			
	43. Pudi.			
Chingleput.	44. Pulicat.			
	45. Ennore.			
	46. Covelong.			

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY—*continued.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
Eastern Group.—contd.				
District.	Port.		*Foreign Vessels.*	
South Arcot.	47. Marakanam.	Sea-going vessels of fifteen tons and upwards.	(*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	48. Cuddalore.			
	49. Porto Novo.			
Tanjore.	50. Tirumalavasal.			
	51. Kodiyampalaiyam.			
	52. Tranquebar.			
	53. Nagore.			
	54. Negapatam.		(*b*) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	55. Velankani.			
	56. Topputurai.			
	57. Point Calimer			
	58. Mutupet.			
	59. Adirampatnam.			
	60. Gopalapatnam.			
	61. Kattumavadi.		(*c*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	62. Krishnajipatnam.			
	63. Ammapatnam.			
	64. Kottaipatnam.			
	65. Sundarapandiyapatnam.			
Madura.	66. Passipatnam.			
	67. Damodarapatnam.		(*d*) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	68. Tondi.			
	69. Nambitalai.			
	70. Pudupatnam.			
	71. Karangadu.			
	72. Tirrupalankudi.			
	73. Devipatnam.			
	74. Mudiyanpatnam.			
			Coasting Vessels.	
	75. Attankarai.			
	76. Emanangundu.			
	77. Pillaimadum.		(*e*) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	78. Pámban.			
	79. Rámesvarám.			
	80. Mandapam.			
	81. Vedalai.			
	82. Marakkayapatnam			
	83. Muttupettai.			
	84. Kilakarái.		(*f*) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	85. Ervadi.			
	86. Valinokkam.			
Tinnevelly.	87. Valpar.			
	88. Tuticorin.			
	89. Kayalpatnam.			
	90. Kulasekharapatnam.			

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY—*continued.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
Western Group.				
District.	Port.		*Foreign Vessels.*	
Malabar.	91. Cochin. 92. Arrupuram. 93. Kukkuyi. 94. Madayi. 95. Attakari. 96. Chávakád. 97. Veliyangod. 98. Ponáni. 99. Kuttayi. 100. Parapanna. 101. Tanur. 102. Parpanangádi. 103. Kadalvandi. 104. Beypore. 105. Molakkadava. 106. Calicut. 107. Pudiyangadi. 108. Ellattu.u. 109. Kappatta. 110. Quilandi. 111. Kollam. 112. Kadalura. 113. Trikodi. 114. Kottakkal. 115. Bedagara. 116. Muttankal. 117. Chompayi. 118. Kallyi. 119. Talayi. 120. Tellicherry. 121. Dharmapatnam. 122. Ezhera. 123. Cannanore. 124. Pudiyangadi. 125. Pal.patnam (Baliapatam). 126. Ettikulam. 127. Kavvayi.	Sea-going vessels of fifteen tons and upwards.	(a) In the case of foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
			(b) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
			(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
			(d) In the case of any other foreign ship or steamer calling at more that one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
			Coasting Vessels.	
			(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
			(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART II.—MADRAS PRESIDENCY—*concluded.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
Western Group—concld.			*Foreign Vessels.*	
District.	Port.		(*a*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
South Canara.	128. Hosdrug. 129. Baikal. 130. Kásaragód. 131. Kumbale. 132. Manjesvara. 133. Mangalore. 134. Mulki. 135. Padubidri. 136. Ermala. 137. Uchhila. 138. Kaph. 139. Udiyavara. 140. Malpe. 141. Barkur or Hangarakatta. 142. Coondapoor. 143. Nyakinakatte (Nayakkankottai). 144. Baindur. 145. Siruru.	Sea-going vessels of fifteen tons and upwards.	(*b*) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
			(*c*) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
			(*d*) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
			Coasting Vessels.	
			(*e*) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
			(*f*) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.

Explanations to Part II of the First Schedule.

Explanation 1.—In this Part of the Schedule—

(*a*) "ship" means a sailing vessel, and "steamer" a steam-vessel;

(*b*) "coasting ship" or "coasting steamer" means respectively a ship or steamer which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port in the island of Ceylon or any part of India, between the westernmost part of Sind and the south-easternmost part of Burma; and "coasting steamer" includes a coasting steam-vessel having a general pass under section 164 of the Sea Customs Act, 1878;[1]

VIII of 1878.

(*c*) "foreign ship" or "foreign steamer" means respectively a ship or steamer not being a coasting ship or coasting steamer.

Explanation 2.—As regards the levy of port-dues, each of the following pairs of ports, namely, Cocanada and Coringa, Nagore and Negapatam, Beypore and Calicut, is to be treated as if it were only one port; every vessel in respect of which such dues have been charged and taken at one of any of the said pairs being exempted from the dues on entering the other of the same pair immediately after leaving the one in which the dues were charged and taken.

[1] Printed. General Acts, Vol. III, Ed. 1898, p. 168.

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART III.—BOMBAY PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Bombay . .	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding four annas per ton.	Once in the same month.
	Tug-steamers, ferry-steamers and river-steamers.	Ditto . . .	Once between the 1st January and the 30th June, and once between the 1st July and 31st December, in each year.
Northern Group of Ports—			
1. Gogha . .	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate.	Once in thirty days at the same port: provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same time or any other port of the same group within thirty day.
2. Dholerá . .			
3. Tankári . .			
4. Dehegám . .			
5. Dehej . .			
6. Broach . .			
7. Bhagwá . .			
8. Surát . .			
9. Matwád . .			
10. Balsár . .			
11. Umarsádi . .			
12. Kolak . .			
13. Kalái . .			
14. Maroli . .			
15. Umbargám .			
16. Gholwad . .			
17. Dáhánu Creek .			
18. Tárápur . .			
19. Olivárá Navápur			
20. Sátpáti Creek .			
21. Máham (Kelva)			
22. Kelva . .			
23. Dantiora . .			
24. Arnála . .			

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART III.—BOMBAY PRESIDENCY—*continued.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Southern Group of Ports—			
1. Bándra	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton: provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs, and an addition of one-half of such highest rate.	Once in thirty days at the same port: provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Vesáva			
3. Manori			
4. Utan			
5. Bassein			
6. Bhiwndi			
7. Kalyan			
8. Thána			
9. Trombay			
10. Panwel			
11. Karanjá			
12. Rewas			
13. Nagothna			
14. Thal			
15. Alibág			
16. Revdandá			
17. Mándad			
18. Bankot			
19. Kelshi			
20. Harnai			
21. Anjanwel			
22. Borya			
23. Jaygad			
24. Varadá			
25. Ratnagiri			
26. Burangad			
27. Jaytápur			
28. Vijaydurg			
29. Devgad			
30. Achra			
31. Málwan			
32. Nivti			
33. Vengula			
34. Redi			
35. Terekhol			
36. Karwár, including Baitkhol.			
37. Chendya			
38. Ankolá			
39. Gangávali			
40. Tadri			
41. Kumptá			
42. Honáwar			
43. Murdeshwar			
44. Shiráli			
45. Bhatkal			

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART III.—BOMBAY PRESIDENCY—*concluded.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Kárachi . .	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding four annas per ton.	Once in three months.
	Tug-steamers and river-steamers.	Ditto . .	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Aden . . .	Sea-going vessels of ten tons and upwards.	Not exceeding three annas per ton.	Once a month.

PART IV.—BURMA.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Rangoon . .	Sea-going vessels of ten tons and upwards.	Not exceeding six annas per ton.	Once in sixty days.
	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Maulmain . .	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Not exceeding four annas per ton.	Once in sixty days.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pies per ton.	Ditto.

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(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment. The Second Schedule.—Enactments repealed.)

PART IV.—BURMA—*concluded.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Kyauk-Phyu .	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Once in sixty days.
Akyab . .	Ditto.	Ditto.	Ditto.
Bassein . .	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Ditto.	Ditto.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pies per ton.	Ditto.
Tavoy . .	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Ditto.
Mergui . .	Ditto.	Ditto.	Ditto.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and year.	Subject or title.	Extent of repeal.
	Acts of the Governor General in Council.	
XII of 1875 .	Indian Ports Act, 1875 . .	So much as has not been repealed.
[1] IX of 1879 .	Burma Coast-lights Act, 1879 .	Section 17 and the preamble to that section.
[2] VII of 1880 .	Indian Merchant Shipping Act, 1880.	The first paragraph of section 72 from and inclusive of the word "Chapter" down to and inclusive of the word "repealed."

[1] Printed, Burma Code, Ed. 1889, p. 12.
[2] Printed, General Acts, Vol. III, Ed. 1898, p. 304.

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THE SECOND SCHEDULE—*concluded.*

Number and year.	Subject or title.	Extent of repeal.
	Acts of the Governor General in Council—concluded.	
IV of 1881	Madras Port-dues Act, 1881	The whole.
XVII of 1882	Indian Ports Act, 1882	The whole.
[1] V of 1883	Indian Merchant Shipping Act, 1883.	Section 31.
XI of 1883	Reduction of Port-dues in the Port of Bombay.	The whole.
[1] IV of 1884	Indian Explosives Act, 1884	Section 3.
V of 1885	Amendment of the Indian Ports Act, 1875.	The whole.
	Act of the Governor of Fort St. George in Council.	
II of 1872	Madras Port Rules	The whole.
	Act of the Lieutenant-Governor of Bengal in Council.	
III of 1872	Calcutta Port Commissioners	The whole.

THE CANTONMENTS ACT, 1889.

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[1] Printed, General Acts, Vol. IV, Ed. 1898, pp. 644 and 703, respectively.

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THE SCHEDULE—ENACTMENTS REPEALED.

ACT No. XIII OF 1889.[1]

[*11th October, 1889.*]

An Act to amend the law relating to Cantonments.

WHEREAS it is expedient to amend the law relating to cantonments; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (*1*) This Act may be called the Cantonments Act, 1889.

(*2*) It extends to the whole of British India;[2] and

(*3*) It shall come into force on such day[3] as the Governor General in Council, by notification in the Gazette of India, appoints in this behalf. Title, extent and commencement.

2. (*1*) On and from that day the enactments specified in the schedule are repealed to the extent mentioned in the third column thereof: Repeal.

(*2*) But all orders, declarations, rules and regulations made, directions, licenses and permits given, taxes imposed and notifications published under

---

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V. p. 100; for Report of the Select Committee, *see ibid*, p. 183; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 108 and 136, and *ibid*, 1889, Pt. VI, pp. 139 and 165.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

The Act has been applied to British Baluchistan by Reg. I of 1890, s. 3, as amended by the British Baluchistan Forest Regulation, 1890 (V of 1890), printed, Baluchistan Code, Ed. 1890, pp. 169 and 103, respectively; it has been applied to the Agency Territories by the Baluchistan Agency Laws Law, 1890, printed, *ibid*, p. 137, and by Notification No. 94-E. A., dated 24th January, 1898, *see* Gazette of India, 1898, Pt. I, p. 31.

It has been applied with modifications, by notifications under ss. 4 and 5 of the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879), printed, General Acts, Vol. III, to the following British Cantonments in Native States, namely:—

(1) Sikandarabad (Hyderabad State), *see* Notification No. 1374-I., dated 25th April, 1892, Gazette of India, 1890, Pt. I, p. 262, as amended by Notification No. 1811-I. B., dated 1st July, 1898; *ibid*, 1898, Pt. I, p. 704;

(2) Mhow (Indore State) . .
(3) Neemuch (Gwalior State) . .
(4) Nowgong (Chhatarpur in Bundelkhand).
} *see* Macpherson's Lists of British Enactments in force in Native States, Central India, Ed. 1893, pp. 102, 146 and 162, respectively;

(5) Disah (Palanpur State) . .
(6) Bhuj (Cutch State) . .
(7) Baroda (Baroda State) . .
} *see* Macpherson's Lists of British Enactments in force in Native States, Western India, pp. 214, 234 and 347, respectively.

[2] The words "inclusive of Upper Burma," were repealed by the Fifth Schedule to the Burma Laws Act, 1898 (XIII of 1898).

[3] The 1st January, 1890, *see* Gazette of India, 1889, Pt. I, p. 678.

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any enactment repealed by this Act or under any enactment repealed by any enactment repealed by this Act, and all limits defined as the local limits of a cantonment with the approval of the Governor General in Council or a Loca Government before the passing of this Act, shall be deemed to have been respectively made, given, imposed and published, and to have been defined, under this Act.

(*3*) Any enactment or document referring to any enactment repealed by this Act, or to any enactment repealed by any enactment repealed by this Act, or to any regulation of the Bengal, Madras or Bombay Code respecting the fixing of the local limits of cantonments and military bazars, shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Interpretation.

3. (*1*) In this Act and in the rules thereunder, unless there is something repugnant in the subject or context,—

(*a*) "officer" means—

(*i*) a person who, being an officer within the meaning of the Army Act,[1] is commissioned and in pay as an officer doing military duty with Her Majesty's regular forces as defined in that Act or as an officer doing such duty in any arm, branch or part of those forces, and 44 & 45 Vict., c. 58.

(*ii*) a person doing military duty as a warrant officer with those forces or with any arm, branch or part thereof, whether he is or is not an officer within the meaning of the Army Act:[1]

(*b*) "soldier" means a person who is a soldier of Her Majesty's regular forces within the meaning of the Army Act,[1] and is not an officer within the meaning of this Act:

(*c*) "spirituous liquor" means any fermented liquor, any wine, any alcoholic liquid obtained by distillation, and the sap of any kind of palm-tree, and includes any other liquid consisting of or containing alcohol which the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare to be a spirituous liquor for the purposes of this Act:

(*d*) "intoxicating drug" means opium, ganja, bhang, charas and every preparation and admixture thereof, and includes any other intoxi-

[1] The figures "1881" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI, Ed. 1898. For the Army Act, *see* Supplement to the Collection of Statutes relating to India, Ed. 1881, p. 22.

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cating substance or liquid which the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare to be an intoxicating drug for the purposes of this Act: and

(*e*) "owner" includes the person who is receiving or entitled to receive the rent of any building or land, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant.

I of 1868. I of 1887.

(*2*) The provisions of the General Clauses Acts, 1868[1] and 1887,[1] shall, so far as they can be made applicable, apply to all rules which may be made under this Act by the Governor General in Council.

CHAPTER II.

CANTONMENTS AND CANTONMENT AUTHORITIES, COURTS AND POLICE.

Cantonments.

Definition of cantonments.

4. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare any place in which any of Her Majesty's regular forces are quartered within the territories administered by such Government to be a cantonment for the purposes of this Act and of all other enactments for the time being in force,[2] and may withdraw any such declaration.[3]

(*2*) The Local Government, with the like sanction, may also, by a like notification, define the limits of any cantonment for the like purposes.[4]

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[1] *See* now the General Clauses Act, 1897 (X of 1897), ss. 20 to 24, printed, General Acts, Vol. VI.

[2] For notifications declaring places to be cantonments in—
(*1*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxv;
(*2*) Burma, *see* Burma Laws List, Ed. 1897, p. 294;
(*3*) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 257;
(*4*) North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 127.

[3] For instance of notification withdrawing a declaration as to a place being a cantonment, *see* Burma Gazette, 1886, Pt. I, p. 125. The notification is kept in force by s. 2 (*2*) of this Act.

[4] For notifications defining the limits or fixing the boundaries of cantonments in—
(*1*) Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1893, pp. 270, 271 and 273 to 275;
(*2*) the Presidency of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. cxxxv and cxxxvi;
(*3*) Burma, *see* Burma Laws List, Ed. 1897, p. 294;
(*4*) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, pp 251 and 257;
(*5*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 238;
(*6*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 127 to 130.

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Cantonment Authorities and Magistrates.

Cantonment authority and Magistrate.

5. For every cantonment beyond the limits of a presidency-town there shall be a cantonment authority and a Cantonment Magistrate.

Cantonment authority.

6. (*1*) The expression "cantonment authority" as used in this Act means a cantonment committee or, in the case of a cantonment for which such a committee has not been constituted, the commanding officer of the cantonment.

(*2*) The Local Government shall determine, with respect to every cantonment in which troops are for the time being quartered, whether or not a cantonment committee is to be constituted.[1]

(*3*) The cantonment authority shall be deemed to be a local authority as defined in the[2] Local Authorities Loan Act, 1879, [3][the Cattle-trespass Act, 1871,] the Indian Telegraph Act, 1885,[4] and the General Clauses Act, 1887.[5] XI of 1879. I of 1871. XIII of 1885. I of 1887.

Cantonment Magistrate.

7. The Cantonment Magistrate shall be a Magistrate appointed by the Local Government under section 12 of the Code of Criminal Procedure, 1882,[6] and, as such, subordinate to the District Magistrate or to the District Magistrate and the Subdivisional Magistrate, as the case may be, under section 17 of that Code. X of 1882.

Cantonment Court of Small Causes.

Appointment of Cantonment Magistrate as Judge of Cantonment Court of Small Causes.

8. (*1*) When the Local Government appoints the Cantonment Magistrate to be the Judge of a Court of Small Causes established within a cantonment under the Provincial Small Causes Courts Act, 1887,[7] it shall, in its order appointing him to be such Judge, declare, and may by notification in the official Gazette vary, within a limit of five hundred rupees, the value of the suits which are to be cognizable by him under that Act. IX of 1887.

(*2*) The provisions of section 15, sub-section (*3*), of the said Act shall not apply to a Court of Small Causes of which a Cantonment Magistrate is the Judge.

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[1] For instance of the issue of such a notification, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 130.

[2] Printed, General Acts, Vol. III, Ed. 1898, p. 259.

[3] The words "the Cattle-trespass Act, 1871," were substituted for the words "Act XVIII of 1883 (*to amend the Cattle-trespass Act, 1871*)," by s. 11 of the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891). For Act I of 1871, *see* General Acts, Vol. II, Ed. 1898, p. 183.

[4] Printed, *supra*, p. 11.

[5] *See* now the General Clauses Act, 1897 (X of 1897), s. 3 (*28*), printed, General Acts, Vol. VI.

[6] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

[7] Printed, *supra*, p. 128.

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Appointment of Additional Judge of Cantonment Court of Small Causes.

9. When the Local Government appoints an Additional Judge of a Court of Small Causes, of which a Cantonment Magistrate is the Judge, it shall, in its order appointing him to be such Additional Judge, declare, and may by notification in the official Gazette vary, within a limit of fifty rupees, the value of the suits with respect to which the functions of the Judge of the Court may be assigned to, and discharged by, the Additional Judge under section 8 of the Provincial Small Cause Courts Act, 1887.[1]

IX of 1887.

Judges of existing Cantonment Courts of Small Causes.

10. Every Cantonment Magistrate presiding over a Court of Small Causes in a cantonment at the commencement of this Act, and every Assistant Cantonment Magistrate then having any of the powers of the Judge of such Court, shall be deemed to have been appointed Judge and Additional Judge, respectively, under section 6 and section 8 of the Provincial Small Cause Courts Act, 1887,[1] and in the absence of any order of the Local Government to the contrary to have jurisdiction with respect to all suits which are cognizable by a Court of Small Causes under that Act and of which the value does not exceed, in the case of a Cantonment Magistrate, five hundred rupees and, in the case of an Assistant Cantonment Magistrate, fifty rupees.

IX of 1887.

Continuance of jurisdiction of Cantonment Court of Small Causes in certain cases notwithstanding reduction of jurisdiction of Judge.

11. A Cantonment Magistrate as Judge of a Court of Small Causes may, whatever may be the value of the suits cognizable by him as such Judge, dispose of any suit which was within the pecuniary limits of the jurisdiction of the Judge presiding over the Court at the time of the institution of the suit, and may entertain and dispose of any proceeding after decree in any such suit.

Cantonment Police.

Police.

12. (*1*) The police-force employed in a cantonment beyond the limits of a presidency-town shall, for the purposes of Act XXIV of 1859[2] (*for the better regulation of the police within the territories subject to the Presidency of Fort St. George*) or Act V of 1861[3] (*for the regulation of Police*) or the corresponding law for the time being in force in the territories administered by the Governor of Bombay in Council, as the case may be, be deemed to be part of the general police-establishment under the superintendence of the Local Government in whose territories the cantonment is situated.

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[1] Printed, *supra*, p. 128.
[2] Printed, Madras Code, Ed. 1888, p. 189.
[3] Printed, General Acts, Vol. I, Ed. 1898, p. 144.

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(2) The area comprised within the limits of a cantonment shall be deemed to be a town for the purposes of section 34 of Act V of 1861.[1]

CHAPTER III.

Spirituous Liquors and Intoxicating Drugs.

Unauthorised sale of spirituous liquor or intoxicating drug.

13. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification[2] in the official Gazette, prescribe in this behalf, any person not subject to military law or any person subject to military law otherwise than as an officer or soldier knowingly barters, sells or supplies, or offers or attempts to barter, sell or supply any spirituous liquor or intoxicating drug to or for the use of any European soldier, or to or for the use of any European or Eurasian being a follower or a soldier's wife, without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he shall be punished with a fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Unauthorised possession of spirituous liquor.

14. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf,—

(*a*) any person subject to military law otherwise than as an officer or soldier, or

(*b*) the wife or servant of any such person or of a soldier,

has in his or her possession except on behalf of the Government or for the private use of an officer more than one quart of any spirituous liquor other than fermented malt-liquor without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he or she shall be punished in the case of a first offence against this section with fine which may extend to fifty rupees, and in the case of a subsequent offence against this section with fine which may extend to one hundred rupees or with imprisonment for a term which may extend to three months.

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 144.

[2] For notifications issued under s. 13 in—

(1) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxxxv and cxxxvi;

(2) Burma, *see* Burma Gazette, 1895, Pt. I, p. 186;

(3) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 130 and 131.

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Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.

15. (*1*) Any police-officer may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence against either of the two last foregoing sections, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed, and any vessels or coverings in which the liquor or drug is contained.

(*2*) Where a person accused of an offence against section 13 has been previously convicted of an offence against that section, an officer in charge of a police-station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment, or within the limits prescribed under section 13, which at the time of the alleged commission of the subsequent offence belonged to, or was in the possession of, the person.

(*3*) The Court convicting a person of an offence against section 13 or section 14 may order the confiscation of the whole or any part of anything seized under sub-section (*1*) or sub-section (*2*).

(*4*) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1882,[1] anything seized under sub-section (*1*) or sub-section (*2*) and not confiscated under sub-section (*3*) shall be restored to the person from whom it was taken.

X of 1882.

Saving of articles sold or supplied for medicinal purposes.

16. The foregoing provisions of this Chapter shall not apply to the sale or supply of any article for medicinal purposes by a medical practitioner, chemist or druggist.

CHAPTER IV.

TAXATION AND CANTONMENT FUND.

Taxation.

General power of taxation.

17. (*1*) With the previous sanction of the Governor General in Council, the Local Government may, by notification in the official Gazette,—

(*a*) impose in any cantonment which is not included in a municipality any tax which, under any enactment in force at the date of the

[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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notification, can be imposed in any municipality within the territories administered by such Government,[1] and

(*b*) abolish or modify any tax so imposed.

(*2*) When any tax is leviable in a cantonment in pursuance of a notification under sub-section (*1*), the Local Government, with the like sanction, may, by a like notification, apply or adapt to the cantonment the provisions of any enactment or rules in force at the date of the notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.[2]

Extension of Act XX of 1856 to certain cantonments.

18. (*1*) The Local Government may, by notification in the official Gazette, extend the provisions of Act XX of 1856 [3] (*to make better provision for the appointment and maintenance of Police Chaukidars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal*) to any cantonment which is not included in a municipality and which is situated in any part of British India in which that Act is in force, and the Cantonment Magistrate may exercise all the powers of the Magistrate under that Act, subject only to the control of the District Magistrate and the Local Government.

(*2*) The Local Government may order that a cantonment to which the provisions of Act XX of 1856 [3] have been extended shall be divided into any number of cantonment divisions, and may determine the nature of the tax to be levied in each such division according to section 10 of that Act.

(*3*) The Local Government may, by notification in the official Gazette, cancel any notification under sub-section (*1*), and may revoke or vary any order under sub-section (*2*).

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[1] For notifications imposing taxes in cantonments in—
(*1*) Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1894, pp. 268 and 269;
(*2*) Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. cxxxvii and cxxxviii;
(*3*) Burma, *see* Burma Laws List, Ed. 1897, p. 296;
(*4*) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, pp. 253 and 254 to 256.
(*5*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 298;
(*6*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 131 to 141;

[2] For notifications prescribing rules for the assessment and recovery of taxes imposed in cantonments in—
(*1*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. cxxxix and cxl;
(*2*) Burma, *see* Burma Laws List, Ed. 1897, pp 296 and 298;
(*3*) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, 253 to 256;
(*4*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 238 and 239;
(*5*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 131 to 141.

[3] Printed, Punjab Code, Ed. 1888, p 15, North-Western Provinces and Oudh Code, Ed. 1892, p. 78, and Ajmere Code, Ed. 1893, p. 27.

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Restriction of power of taxation in cantonments in which Act XX of 1856 is in force.

19. While a tax assessed according to the circumstances, and the property to be protected, of the persons liable thereto, or according to the annual value of houses and grounds, is levied under Act XX of 1856 [1] in a cantonment, a tax on persons practising any profession or art or carrying on any trade or calling, or a tax on buildings and lands, as the case may be, [2][shall not be leviable in the cantonment in pursuance of a notification under section 17 of this Act].

Power to prohibit or exempt from taxation.

20. (*1*) Notwithstanding anything in any enactment for the time being in force, the Governor General in Council may, by notification in the Gazette of India, prohibit the levy of the whole or any part of any tax imposed in a cantonment,[3] or exempt any person by name or in virtue of his office or any class of persons,[4] or any property or any class of property,[5] from the operation of any such tax, and may, by a like notification, rescind any such prohibition or exemption.

(*2*) Where the area, subject to the authority of a municipal committee as defined in section 2 of the Municipal Taxation Act, 1881,[6] includes the whole or part of a cantonment, nothing in section 4 or section 5 of that Act or in any other like enactment for the time being in force shall apply to so much of that area as is comprised in the cantonment.

XI of 1881.

Cantonment Fund.

Cantonment fund.

21. (*1*) There shall be formed for every cantonment which is not included in a municipality a cantonment fund, and there shall be placed to the credit thereof, among other sums, the following, namely :—

(*a*) subject to deductions under section 545 of the Code of Criminal Procedure, 1882,[7] or under any other enactment for the time being in force, or under any order of the Local Government, all fines recovered from persons convicted of offences committed within the cantonment against this Act or against any enactment

X of 1882

[1] Printed, Punjab Code, Ed. 1888, p. 15, North-Western Provinces and Oudh Code, Ed. 1892, p. 78, and Ajmere Code, Ed. 1893, p. 27.

[2] These words were substituted for the words "shall not be imposed under section 17 of this Act in the cantonment" by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI. This amendment is to have effect as from the commencement of Act XIII of 1889. *See* s. 2 (*8*) of Act XII of 1891.

[3] For notification exempting from octroi-duty, fodder brought into cantonments for use of Native Sillahdar Cavalry Regiments, *see* Gazette of India, 1895, Pt. I, p. 76.

[4] For notification exempting certain persons when on duty in cantonments brought under the operation of a Municipal Act, from certain taxes, *see* Gazette of India, 1881, Pt. I, p. 758. The notification is kept in force by s. 2 (*2*) of this Act.

For notification exempting departmental and honorary commissioned and warrant officers and departmental non-commissioned officers from the conservancy tax imposed in cantonments in Burma, *see* Gazette of India, 1895, Pt. I, p. 722.

[5] For notification exempting houses in certain cases from house-tax, *see* Gazette of India, 1894, Pt. I, p. 492.

[6] Printed, General Acts, Vol. III, Ed. 1898, p. 378.

[7] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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extended or rule made thereunder, or against the provisions of section 34 of Act V of 1861 [1] or the corresponding enactment for the time being in force in the territories administered by the Governor of Fort St. George in Council or by the Governor of Bombay in Council, or against the provisions of Chapter XIII or Chapter XIV of the Indian Penal Code [1] or of section 156 of the Army Act *;[2] XLV of 1860. 44 & 45 Vict., c. 58.

(b) the proceeds of taxes imposed under section 17 or levied under Act XX of 1856 [3] in the cantonment; and

(c) rents and profits accruing from property placed by the Government under the management of the cantonment authority.

(2) Notwithstanding anything in any enactment as to the purposes to which the proceeds of a tax are to be appropriated, the cantonment fund shall be applicable, subject to the rules under this Act, to the maintenance of the police-force employed in the cantonment and to the other purposes of this Act within the cantonment and, with the general or special sanction of the Local Government, to like objects, within or without British India, beyond the limits of the cantonment in cases in which, in the opinion of the Local Government, the application of the fund beyond those limits is for the benefit of the inhabitants of the cantonment or of any military force ordinarily quartered therein or of any detachment of any such force.

Custody of cantonment fund.

22. (1) Where, in or near a cantonment there is a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over, the cantonment fund shall be kept in the treasury, sub-treasury or bank.

(2) Where there is no such treasury, sub-treasury or bank, the cantonment fund may be deposited with any banker or person, acting as a banker, who has given such security for the safe custody and repayment on demand of the fund so deposited as the District Magistrate may in each case think sufficient.

Vesting and management of cantonment fund.

23. The cantonment fund shall be vested in Her Majesty, and, subject to the provisions of this Act and of the rules thereunder and to the control of the Local Government, the management of the fund shall be entrusted to the cantonment authority.

Acquisition of immoveable property at cost of

24. The cantonment fund shall be deemed to be "public revenues" within the meaning of the proviso to section 6 of the Land Acquisition Act, 1870,[4] X of 1870.

[1] Printed, General Acts, Vol. I, Ed. 1898, pp. 379 and 240, respectively.

[2] The figures "1881" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI. For the Army Act, *see* Supplement to the Collection of Statutes relating to India, Ed. 1881, p. 22.

[3] Printed, Punjab Code, Ed. 1888, p. 15, North-Western Provinces and Oudh Code, Ed. 1892, p. 78, and Ajmere Code, Ed. 1893, p 27.

[4] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI.

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and any property acquired at the cost of the cantonment fund shall vest in Her Majesty. **cantonment fund.**

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

Extension of enactments to cantonments.

25. The Governor General in Council may, by notification in the Gazette of India, extend to all cantonments or to any cantonment or to any part of any cantonment any enactment for the time being in force in any municipality in British India, and declare its extension to be subject to such restrictions and modifications, if any, as he thinks fit.

Matters respecting which rules may be made.

26. The Governor General in Council may make rules consistent with this Act to provide for all or any of the following matters,[1] namely :—

(*1*) the manner in which, and the authority to which, application for permission to occupy land belonging to the Government in a cantonment is to be made ;

(*2*) the conditions to be annexed to every such permission given in pursuance of such an application ;

(*3*) the preparation and maintenance of registers of immoveable property in cantonments ;

(*4*) the constitution of cantonment committees, the functions to be discharged by them, the conduct of, and the control to be exercised over, their proceedings, and the division of duties among the members of such committees ;

(*5*) the functions to be discharged by the commanding officer of a cantonment where a cantonment committee has not been constituted, or has in pursuance of an order of the Local Government ceased to exist, or for any reason cannot be convened ;

(*6*) the executive duties of the Cantonment Magistrate and his position in relation to the commanding officer of the cantonment ;

(*7*) the purposes to which the cantonment fund may be applied ;

(*8*) the authority on which money may be paid from the cantonment fund ;

(*9*) the investment of any balance of that fund ;

(*10*) the execution of contracts by, or on behalf of, the cantonment authority ;

(*11*) the accounts to be kept by the cantonment authority, and the manner in which those accounts are to be audited and published ;

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[1] For some rules made under this section, *see* azette of India, 1896, Pt. I, pp. 379 and 463.

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(*12*) the definition and abatement of nuisances for which sufficient provision has not, in the opinion of the Governor General in Council, been made under section 25 ;

(*13*) the requisitions which may be made on persons having the control of sewers, drains, latrines or other things creating, or likely to create, nuisances, and the mode of enforcing such requisitions ;

(*14*) the prevention of the overcrowding of buildings and places in a cantonment ;

(*15*) the construction and maintenance, to the satisfaction of the cantonment authority, of buildings and of boundary walls, hedges and other fences ;

(*16*) the regulation of the practice of agriculture and irrigation in a cantonment, the keeping of lands therein in proper order, and the felling, lopping and trimming of trees on such lands ;

(*17*) the regulation of encamping-grounds,[1] sarais, markets and slaughter-houses, of traffic on roads, and of processions and public assemblies ;

(*18*) the use and management of burial and burning grounds ;

(*19*) the supervision and the regulation of the use of public wells, tanks, rivers, streams, springs or other sources from which water is or may be made available for public use, and of the lands in the vicinity thereof ;

(*20*) the parts of a cantonment in which persons practising any profession or carrying on any trade, calling or occupation may be required to reside for the purpose of practising the profession or carrying on the trade, calling or occupation, and the conditions, if any, to be observed by such persons ;

(*21*) the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals or other places within or without a cantonment for the reception and treatment of persons suffering from any disease ;[2]

(*22*) the segregation in, or the removal and exclusion from, a cantonment, or the destruction of animals suffering or supposed to be suffering from any infectious or contagious disease ;

(*23*) the suppression of mendicancy and of loitering or importuning for the purpose of prostitution, and the removal and exclusion from a cantonment of disorderly persons, of persons who have been convicted of any offence against Chapter XVII of the Indian

[1] For special Act for the regulation of public sarais, *see* Act XXII of 1867, printed, General Acts, Vol. I, Ed. 1898, p. 628.

[2] For rules of this nature, *see* Gazette of India, 1897, Pt. I, p. 941.

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XLV of 1860. 44 & 45 Vict., c. 58. X of 1882.

Penal Code,[1] or section 156 of the Army Act, *[2] or have been ordered under the Code of Criminal Procedure, 1882,[3] to execute a bond for their good behaviour, and of persons whom the commanding officer deems it expedient to exclude from the cantonment with or without assigning any reason for excluding them therefrom;

(*24*) the prevention of cruelty to animals and the care of animals while grazing;[4]

(*25*) the prevention and extinction of fires;

(*26*) the registration of births and deaths;

(*27*) the appointment by owners of buildings and lands in cantonments, who are absent from cantonments, of persons residing within or near cantonments, to act as their agents for all or any of the purposes of this Act or any enactment extended or rule made thereunder;

(*28*) the powers of inspection, entry and search which may be exercised in carrying out any of those purposes, and the cases in which breaches of enactments extended or rules made under this Act are to be cognizable offences;

(*29*) the mode in which summonses, notices, requisitions and other documents are to be served on the persons to whom they are addressed;

(*30*) the cases, authorities and conditions in, to and on which executive orders passed under this Act or any enactment extended or rule made thereunder may be appealed from; and,

(*31*) generally, the carrying out of the purposes of this Act. * * *[5]

Supplemental provisions respecting rules.

27. (*1*) The power to make rules under the last foregoing section is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette of India and in such other manner as the Governor General in Council prescribes.

(*2*) A rule under the last foregoing section may be general for all cantonments in British India or for all cantonments not expressly excepted from its operation, or may be special for the whole or any part of any one or more than one cantonment, as the Governor General in Council directs.

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

[2] The figures "1881" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI. For the Army Act, *see* Supplement to the Collection of Statutes relating to India, Ed. 1881, p. 22.

[3] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

[4] For special Act for the prevention of cruelty to animals, *see* Act XI of 1890, printed, *infra*, p. 466.

[5] The proviso which was added after cl. (31) by the Cantonments Act Amendment Act, 1895 (V of 1895), s. 2, was repealed by the Cantonments Act, 1897 (XV of 1897), printed, General Acts, Vol. VI, Ed. 1898.

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(*3*) A copy of the rules for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Magistrate.

(*4*) In making any rule under clause (*12*) or any of the following clauses of the last foregoing section, the Governor General in Council may direct that a breach of it shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to eight days, and, when the breach is a continuing breach, with fine which, in addition to such fine or imprisonment as aforesaid, may extend to five rupees for every day after the first during which the breach continues.

Extension of certain enactments and rules to places beyond cantonments.

28. The Local Government may, by notification in the official Gazette, and subject to any conditions as to compensation or otherwise which it may see fit to impose, extend to any area beyond a cantonment and in the vicinity thereof—

(*a*) any enactment which, with or without restriction or modification, has been extended to the cantonment or any part thereof under section 25, or

(*b*) any rule in force in the cantonment or any part thereof under clause (*12*) or any of the following clauses of section 26, as well as any direction there in force under sub-section (*4*) of section 27;

and the enactment, rule or direction specified in the notification shall, so long as the notification remains uncancelled, apply to that area as if the area were included in the cantonment.[1]

Inapplicability of section 555, Act X, 1882, to trials of offences against this Act.

29. A Judge or Magistrate shall not be deemed within the meaning of section 555 of the Code of Criminal Procedure, 1882,[2] to be a party to, or personally interested in, any prosecution for an offence against this Act, or against any enactment extended or rule made thereunder, because he is a member of the cantonment committee or, where there is no such committee, is the commanding officer of the cantonment or because he has ordered or approved the prosecution. X of 1882.

Cantonments in presidency-towns.

30. Where a cantonment is situated within the limits of a presidency-town, the functions assigned to any authority by this Act or any enactment extended or rule made thereunder shall, subject to the provisions of any enactment for the time being in force, be discharged by such authority as the Local Government may appoint in this behalf.

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[1] For instances of notifications issued under the power conferred by this section, *see* Burma Laws List, Ed. 1897, p. 300; and North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 141 and 142.

[2] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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Protection of cantonment authority, Magistrate and commanding officer.

31. A suit or prosecution shall not be entertained in any Court against any cantonment authority, authority appointed under the last foregoing section, Cantonment Magistrate [or commanding, medical or other officer][1] for anything in good faith done or purporting to be done in pursuance of powers conferred by or under this Act on such authority, Magistrate or officer, whether the thing done was or was not authorised by the powers so conferred.

Registration.

32. (*1*) Section 54, paragraphs 2 and 3, and sections 59, 107 and 123 of the Transfer of Property Act, 1882,[2] with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment in British India.

IV of 1882.

(*2*) Where a cantonment has not been constituted a sub-district or district for the purposes of the Indian Registration Act, 1877,[3] under section 9 of that Act, the Registrar of the district in which the cantonment is situated shall cause a copy of such entries in Indexes Nos. I and II as relate to immoveable property within the limits of the cantonment to be forwarded to the Cantonment Magistrate annually or at such shorter intervals as the Local Government may prescribe.

II of 1877.

Limitation of the operation of this Act.

33. The Governor General in Council may, by notification in the Gazette of India, exclude from the operation of the whole or any part of this Act the whole or any part of any cantonment.

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[1] These words were substituted for the words "or commanding officer" by s. 3 of the Cantonments Act Amendment Act, 1897 (XV of 1897), printed, General Acts, Vol. VI.

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 40.

[3] Printed, General Acts, Vol. III, Ed. 1898, p. 41.

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THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Subject or title.	Extent of repeal.
1	2	3
	Acts of the Governor General in Council.	
Act XVIII of 1853 .	Sale of spirits in cantonments.	The whole, so far as it has not been repealed.
Act IV of 1854 .	Sentences of Superintendents of Bazars.	The whole, so far as it has not been repealed.
[1] Act XLV of 1860 .	Indian Penal Code .	The words "or before a Military Court of Request" in *Explanation 1* to section 193.
[2] Act V of 1869 .	Indian Articles of War .	Part III, clause (*c*) : and for the last twenty-seven words of Part I, clause (*f*), the following shall be substituted, namely :— "and officers in charge of the police in cantonments are defined and controlled."
[2] Act VII of 1870 .	Court-fees Act, 1870 .	Section 19, clause iv, and in Schedule II, article 1, clause (*a*), the words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859."
[3] Act XV of 1874 .	Laws Local Extent Act, 1874.	So much of the second schedule as relates to Madras Regulation XIV of 1832 : so much of the third schedule as relates to sections 18, 19, 20, 45, 46 and 47 of Bombay Regulation XXII of 1827 : and so much of the fourth and fifth schedules as relates to Bengal Regulation XX of 1810.
[3] Act XX of 1875 .	Central Provinces Laws Act, 1875.	So much as relates to Bengal Regulation XX of 1810.

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[2] Printed, General Acts, Vol. II, Ed. 1898, pp. 38, 124 and 483, respectively.
[3] Printed, Central Provinces Code, Ed. 1891, p. 76.

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(The Schedule. Enactments repealed.)

THE SCHEDULE—*continued.*

Number and year.	Subject or title.	Extent of repeal.
1	2	3
Acts of the Governor General in Council—concluded.		
[1] Act XVIII of 1876 .	Oudh Laws Act, 1876 .	So much as relates to Bengal Regulation XX of 1810.
[2] Act III of 1877 .	Indian Registration Act, 1877.	The second paragraph of section 9, beginning with the word "Whenever" and ending with the word "thereof."
[3] Act XIV of 1879 .	Hackney-carriage Act, 1879.	Section 4, from and inclusive of the words "and the Governor General in Council may" down to and inclusive of the words "in which British troops are cantoned".
Act III of 1880 .	Cantonments Act, 1880 .	So much as has not been repealed.
[4] Act XXII of 1881 .	Excise Act, 1881 . .	The proviso to section 53.
[5] Act X of 1882 .	Code of Criminal Procedure, 1882.	Clause (*b*) of section 1.
[6] Act XIV of 1882 .	Code of Civil Procedure .	Section 6, clause (*a*), the words "an officer or" in section 468, and the whole of section 469.
[7] * * * *	* * * *	* * * * * *
Regulation of the Bengal Code.		
Regulation XX of 1810.	Military Bazars . .	So much as has not been repealed.

1 Printed, North-Western Provinces and Oudh Code, Ed. 1892, p. 315.
2 Printed, General Acts, Vol. III, Ed. 1896, p. 41.
3 Printed, Punjab Code, Ed. 1888, p. 124, Burma Code, Ed. 1889, p. 34, Central Provinces Code, Ed. 1891, p. 94, North-Western Provinces and Oudh Code, Ed. 1892, p. 362, Coorg Code, Ed. 1893, p. 61, Ajmere Code, Ed. 1893, p. 90.
4 This Act has now been entirely repealed by the Excise Act, 1896 (XII of 1896).
5 Repealed by the Code of Criminal Procedure, 1898 (Act V of 1898).
6 Printed, General Acts, Vol. IV, Ed. 1898, p. 262.
7 The reference to the Upper Burma Laws Act, 1886 (XX of 1886), has been repealed by the Burma Laws Act, 1898 (XIII of 1898), *see* the Fifth Schedule.

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THE SCHEDULE—*concluded.*

Number and year.	Subject or title.	Extent of repeal.
1	2	3
	Regulation of the Bombay Code.	
[1] Regulation XXII of 1827.	Military authority . .	So much as has not been repealed, except sections 40, 41, 42 and 43.
	Acts of the Governor of Fort St. George in Council.	
Act IV of 1865 .	Madras Cantonments .	The whole, so far as it has not been repealed.
Act I of 1866 . .	Madras Cantonments .	So much as has not been repealed.
	Act of the Governor of Bombay in Council.	
Act III of 1867 .	Bombay Cantonment Act of 1867.	So much as has not been repealed.
	Act of the Lieutenant-Governor of Bengal in Council.	
[2] Act VII of 1878 .	Bengal Excise Act, 1878 .	The proviso to section 81.
	Regulation under the Statute 33 Victoria, Chapter 3.	
[3] III of 1877 . .	Ajmere Laws Regulation, 1877.	Section 39 and so much as relates to Bengal Regulation XX of 1810.

[1] Printed, Bombay Code, Vol. I, Ed. 1894, p. 22.
[2] Printed, Bengal Code, Vol. I, Ed. 1890, p. 366.
[3] Printed, Ajmere Code, Ed. 1893, p. 186.

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ACT No. XV OF 1889.[1]

[*17th October, 1889.*]

An Act to prevent the Disclosure of Official Documents and Information.

WHEREAS it is expedient to prevent the disclosure of official documents and information; It is hereby enacted as follows :—

Title, extent and application.

1. (*1*) This Act may be called the Indian Official Secrets Act, 1889; and

(*2*) It extends to the whole of British India and applies—

(*a*) to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and

(*b*) to all Native Indian subjects of Her Majesty without and beyond British India.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*1*) any reference to a place belonging to Her Majesty includes a place belonging to any department of the Government, whether the place is or is not actually vested in Her Majesty:

(*2*) Expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model or information itself or the substance or effect thereof only be communicated:

(*3*) "document" includes part of a document:

(*4*) "model" includes design, pattern and specimen:

(*5*) "sketch" includes any photograph or other mode of representation of any place or thing: and

(*6*) "office under Her Majesty" includes any office or employment in or under any department of the Government.

Disclosure of information.

3. (*1*) (*a*) Where a person for the purpose of wrongfully obtaining information—

(i) enters or is in any part of a place belonging to Her Majesty,

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1889, Pt. V, p. 206; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 167 and 176.

This Act has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3. printed, Baluchistan Code, Ed. 1890, p. 69.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Burma Gazette, 1898, Pt. I, p. 154.

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being a fortress, arsenal, factory, dockyard, camp, ship, office or other like place, in which part he is not entitled to be, or,

(ii) when lawfully or unlawfully in any such place as aforesaid, either obtains any document, sketch, plan, model or knowledge of anything which he is not entitled to obtain, or takes without lawful authority any sketch or plan, or,

(iii) when outside any fortress, arsenal, factory, dockyard or camp belonging to Her Majesty, takes or attempts to take without authority given by or on behalf of Her Majesty any sketch or plan of that fortress, arsenal, factory, dockyard or camp, or

(*b*) where a person knowingly having possession of or control over, any such document, sketch, plan, model or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interest of the State, to be communicated at that time, or

(*c*) where a person after having been entrusted in confidence by some officer under Her Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the naval or military affairs of Her Majesty, wilfully and in breach of such confidence communicates the same when, in the interest of the State, it ought not to be communicated,

he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(*2*) Where a person having possession of any document, sketch, plan, model or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to Her Majesty, or to the naval or military affairs of Her Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interest of the State to be communicated at that time, he shall be liable to the same punishment as if he committed an offence under the foregoing provisions of this section.

(*3*) Where a person commits any act declared by this section to be an offence, he shall, if he intended to communicate to a foreign State any information, document, sketch, plan, model or knowledge obtained or taken by him, or entrusted to him, as aforesaid, or if he communicates the same to any agent of a foreign State, be punished with transportation for life or for any

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term not less than five years, or with imprisonment for a term which may extend to two years.

Breach of official trust.

4. (*1*) Where a person, by means of his holding or having held an office under Her Majesty, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan or model, or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust.

(*2*) A person guilty of a breach of official trust shall—

(*a*) if the communication was made or attempted to be made to a foreign State, be punished with transportation for life or for any term not less than five years, or with imprisonment for a term which may extend to two years, and

(*b*) in any other case be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(*3*) This section shall apply to a person holding a contract with any department of the Government, or with the holder of any office under Her Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract, who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were respectively holders of an office under Her Majesty.

Restriction on prosecution.

5. A prosecution for an offence against this Act shall not be instituted except by or with the consent of the Local Government or of the Governor General in Council.

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ACT No. XX OF 1889.[1]

[*13th December, 1889.*]

An Act to amend Act XXXVI of 1858.[2]

WHEREAS it is expedient to extend the authority of the Governor General in Council with respect to the appointment of asylums for the reception and detention of lunatics and with respect to the transfer of any lunatic from any one to any other lunatic asylum in British India; It is hereby enacted as follows :—

Substitution of new section for section 17A, Act XXXVI, 1858. Provision for provinces having insufficient or no asylums.

1. For section 17A of Act XXXVI of 1858[2] (*an Act relating to Lunatic Asylums*), as amended by Act XVIII of 1886 (*an Act to amend Act XXXVI of 1858*) the following shall be substituted, namely :—

"17A. In either of the following cases, namely :—

(*a*) when an Executive Government has not established within its limits a public asylum for the reception and detention of lunatics,

(*b*) when it appears to the Governor General in Council that a public asylum established within such limits is not conveniently situated with respect to any part of the territories administered by such Government or does not afford sufficient or, in the case of any class of lunatics, suitable accommodation,

the Governor General in Council may from time to time appoint an asylum in any part of British India beyond the limits of such Government to be an asylum to which any Magistrate or Judge exercising jurisdiction within those limits may send lunatics or any class of lunatics as to an asylum established under this Act for the division in which his jurisdiction is situate."

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1889, Pt. V, p. 181; for Report of the Select Committee, *see ibid*, p. 207; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 142, 145 and 195.

The Act is in force in the Goálpára District (excluding the Eastern Dvárs) as being part of Act XXXVI of 1858 which was extended thereto under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), by Notification No. 1242-J., dated 1st April, 1897, *see* Assam Code, Ed. 1897, pp. 709 & 714; in British Baluchistan, in which Act XXXVI of 1858 was declared in force by the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, p. 69; in the Angul District, in which Act XXXVI of 1858 was declared in force by the Angul District Regulation, 1894 (I of 1894).

It has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), *see* Calcutta Gazette, 1895, Pt. I, p. 310.

The Act is in force in Upper Burma (except the Shan States) as being part of the original Act, XXXVI of 1858, declared in force there by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Gazette of India, 1892, Pt. I, p. 94.

[2] Printed, General Acts, Vol. I, Ed. 1898, p. 156.

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2. After section 17B of the said Act XXXVI of 1858, the following section shall be added, namely :— **Addition of new section after section 17B, Act XXXVI, 1858.**

"17C. Any lunatic may be removed from any lunatic asylum established or licensed under this Act, by order of an Executive Government, to any other such asylum within the limits of such Government, and, by order of the Governor General in Council, to any other asylum in any part of British India." **Removal of lunatics from one asylum to another.**

3. [*Repeal of section 11, Act of XXXVI of 1858.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

ACT No. I OF 1890.[1]

[*14th February, 1890.*]

An Act to make better provision for recovering certain public demands.

WHEREAS it is expedient to make better provision for recovering certain public demands ; It is hereby enacted as follows :—

1. (*1*) This Act may be called the Revenue Recovery Act, 1890. **Title, extent and commencement.**

(*2*) It extends to the whole of British India, [2]* * * * * and British Baluchistan ; and

(*3*) It shall come into force at once.

2. In this Act, unless there is something repugnant in the subject or context,— **Definitions.**

(*1*) "district" includes a presidency-town :

(*2*) "Collector" means the chief officer in charge of the land-revenue administration of a district ; and

(*3*) "defaulter" means a person from whom an arrear of land-revenue or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.

3. (*1*) Where an arrear of land-revenue, or a sum recoverable as an arrear **Recovery of**

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1887, Pt. V, p. 128 ; for Report of the Select Committee, *see ibid*, 1890, Pt. V, p. 11 ; and for Proceedings in Council, *see ibid*, 1887, Pt. VI, pp. 66 and 67, and *ibid*, 1890, Pt. VI, pp. 7 and 12.

This Act has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), *see* Calcutta Gazette, 1892, Pt. I, p. 448.

It has been declared in force in the Angul District by the Angul District Regulation, 1894 (I of 1894).

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

[2] The words "inclusive of Upper Burma" were repealed by the Fifth Schedule to the Burma Laws Act, 1898 (XIII of 1898).

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public demands by enforcement of process in other districts than those in which they become payable.

of land-revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule, stating—

(*a*) the name of the defaulter and such other particulars as may be necessary for his identification, and

(*b*) the amount payable by him and the account on which it is due.

(*2*) The certificate shall be signed by the Collector making it, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(*3*) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

Remedy available to person denying liability to pay amount recovered under last foregoing section.

4. (*1*) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid.

(*2*) A suit under sub-section (*1*) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(*3*) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities.

5. Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

Property liable to sale under this Act.

6. (*1*) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immoveable property belonging to the defaulter in the district.

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(2) The Collector may at any time, by order in writing, withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount.

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as against the Government and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate.

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immoveable property under this Act for the recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of proceedings being taken against those interests.

(5) A proclamation under this section shall be made by beat of drum or other customary method and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates.

Saving of local laws relating to revenue.

7. Nothing in the foregoing sections shall be construed—

(a) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land-revenue or of sums recoverable as arrears of land-revenue, or

(b) to authorise the arrest of any person for the recovery of any tax payable to the corporation, commissioner, committee, board, council or person having authority over a municipality under any enactment for the time being in force.

Recovery in British India of certain public demands arising beyond British India.

8. When this Act has been applied to any local area which is under the administration of the Governor General in Council but which is not part of British India, an arrear of land-revenue accruing in that local area, or a sum recoverable as an arrear of land-revenue and payable to a Collector or other public officer or to a local authority in that local area, may be recovered under this Act in British India.[1]

[1] For notification applying the Act to all territories which are under the administration of the Governor General in Council but which are not part of British India, including the territories for the time being administered by the Agent to the Governor General in Baluchistan as such Agent, see No. 1415-I., dated 30th April, 1890, printed, Western India volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1895, p. 886.

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THE SCHEDULE.

CERTIFICATE.

[*See section 3, sub-section (1).*]

From

The Collector of

To

The Collector of .

Dated the of 18 .

The sum of Rs. is payable on account of by , son of , resident of , who is believed (to be at) (to have property consisting of at) in your district.

Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at .

A. B.,
Collector of

ACT No. II OF 1890.[1]

[*14th February, 1890.*]

An Act to amend Acts XVII of 1864,[2] X of 1865,[2] II of 1874[3] and V of 1881.[4]

WHEREAS it is expedient to amend Act XVII of 1864[2] (*an Act to constitute*

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[1] Short title, "The Probate and Administration Act, 1890," *see* the Indian Short Titles Act, 1897 (XIV of 1897). General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1889, p. 195; for Report of the Select Committee, *see ibid*, 1890, Pt. V, p. 15; for Proceedings in Council, *see ibid*, 1889, Pt. VI, pp. 145 and 149, and *ibid*, 1890, Pt. VI, p. 16.

Ss. 9 to 15 of the Act have been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, p. 597, *see* Calcutta Gazette, 1892, Pt. I, p. 448.

So far as this Act amends Acts X of 1865, II of 1874, and V of 1881, it is in force in Upper Burma (except the Shan States) as being part of those original Acts, declared in force there by the Burma Laws Act, 1898 (XIII of 1898), *see* the First Schedule to the Act.

The whole Act, II of 1890, however, as a separate Act had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Gazette of India, 1892, Pt. I, p. 94.

So far as it amends the Administrator General's Act, 1874 (II of 1874), it has been extended to the Shan States, *see* the Shan States Laws and Criminal Justice Order, 1895, Burma Gazette, 1895, Pt. I, p. 262.

[2] Printed, General Acts, Vol, I, Ed. 1898 pp 440 and 468, respectively.

[3] Printed, General Acts, Vol. II, Ed. 1898, p. 419.

[4] Printed, General Acts, Vol. III, Ed. 1898, p. 389.

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X of 1865. II of 1874. V of 1881.

an Office of Official Trustee), the Indian Succession Act, 1865,[1] the Administrator General's Act, 1874,[2] and the Probate and Administration Act, 1881;[3] It is hereby enacted as follows :—

Act XVII of 1864.[1]

Addition to section 1, Act XVII, 1864.

1. In section 1 of Act XVII of 1864, before the definition of the expression "High Court", the following shall be inserted, namely :—

"Government."

"The word 'Government' shall mean, in relation to the Presidency of Fort William in Bengal, the Governor General in Council; in relation to the Presidency of Fort St. George, the Governor of Fort St. George in Council; and in relation to the Presidency of Bombay, the Governor of Bombay in Council:".

Insertion of new section after section 1, Act XVII, 1864.

2. After section 1 of the said Act the following shall be inserted, namely —

Construction of references to Presidencies.

"2. In this Act references to the Presidency of Fort William in Bengal, the Presidency of Fort St. George and the Presidency of Bombay shall, as regards all persons for whom the Governor General in Council has for the time being power to make laws and regulations, be read as references to the Presidency of Bengal, the Presidency of Madras and the Presidency of Bombay, respectively, as those expressions are severally defined in the law for the time being in force relating to the office and duties of Administrator General."

Substitution of new section for section 5.

3. For section 5 of the said Act the following shall be substituted, namely :—

Appointment, suspension and removal of Official Trustees.

"5. Every Official Trustee appointed under this Act shall be appointed and may be suspended or removed from his office by the Government."

Amendment of section 6, Act XVII, 1864.

4. In section 6 of the said Act, for the words "Chief Justice by whom he is appointed" the word "Government" shall be substituted.

Amendment of section 7, Act XVII, 1864.

5. For the portion of section 7 of the said Act beginning with the words "It shall be lawful for the Chief Justice of the High Court" and ending with the words "it shall be lawful for the Chief Justice to appoint some

[1] Printed, General Acts, Vol. I, Ed. 1898, pp. 440 and 468.
[2] Printed, General Acts, Vol. II, p. 419.
[3] Printed, General Acts, Vol. III. Ed. 1898, p. 339.

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person to officiate as Official Trustee" the following shall be substituted, namely :—

"It shall be lawful for the Government from time to time to grant leave of absence to the Official Trustee, but subject always to such and the like rules as may be for the time being in force as to leave of absence of officers attached to the High Court. Whenever any Official Trustee shall obtain leave of absence, it shall be lawful for the Government to appoint some person to officiate as Official Trustee."

Addition to section 11, Act XVII, 1864.

6. To section 11 of the said Act the following shall be added, namely :—

"Provided that the High Court, by its order appointing the Official Trustee to be trustee of such property, may, for special reasons to be recorded by the Court, direct that the Official Trustee shall be entitled by way of remuneration in respect of the capital moneys, sums and rents aforesaid, or any of them, to a commission at rates or a rate to be specified in the order and exceeding the rates or rate hereinbefore in this section prescribed."

Addition of sections to Act XVII, 1864.

7. To the said Act, after section 32, the following shall be added, namely :—

Compliance with requisitions for returns.

"33. The Official Trustee shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper.

Division of the Presidency of Fort William in Bengal into Provinces.

"34. (*1*) Notwithstanding anything in the foregoing provisions of this Act, the Governor General in Council, upon the occurrence of any vacancy in the office of the Official Trustee of Bengal, may, by notification in the Gazette of India,—

(*a*) divide the Presidency of Fort William in Bengal into so many Provinces as he thinks fit,

(*b*) define the limits of each of those Provinces, and

(*c*) appoint an Official Trustee for each Province, and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely :—

(i) the office of Official Trustee of Bengal shall cease to exist:

(ii) the Official Trustee of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Official Trustee of Bengal had and performed as Official Trustee therein:

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in the Province, be discharged by the Governor General in Council:

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(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court of Judicature at Fort William in Bengal in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf:

(v) in the foregoing provisions of this Act, the word 'Presidency' shall be deemed to include a Province, the expression 'Chief Justice' the Chief Justice, senior Judge or sole Judge, as the case may be, of a High Court appointed by the Governor General in Council under clause (iv) of this sub-section, and the expression 'Advocate General' a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency: and,

(vi) generally, the provisions of the foregoing sections and of any other enactment for the time being in force with respect to the Official Trustee of Bengal shall, in relation to a Province, be construed, so far as may be, to apply to the Official Trustee appointed for the Province under this section.

(*2*) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Fort William in Bengal into Provinces, and to or in which the Official Trustee of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Official Trustee of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Official Trustee of Bengal, and shall hold and execute the trusts of which immediately before the publication of the notification the Official Trustee of Bengal was trustee in all respects as if he were such successor.

(*3*) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (*1*)."

Official Trustees holding office at commencement of this Act.

8. Every person holding the office of Official Trustee at the commencement of this Act shall be deemed to have been appointed under Act XVII of 1864 as amended by this Act.

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The Indian Succession Act, 1865.[1]

Addition of new section after section 326, Act X, 1865.

9. After section 326 of the Indian Succession Act, 1865,[1] the following shall be inserted, namely :— X of 1865.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

"326A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

The Administrator General's Act, 1874.[2]

Amendment of definitions of "Presidency of Bengal" and "Presidency of Bombay" in section 3, Act II, 1874.

10. In clause (*b*) of the definition of the expression "Presidency of Bengal" in section 3 of the Administrator General's Act, 1874, the word "Burma" shall be substituted for the words "British Burma", and to clause (*a*) of the definition of the expression "Presidency of Bombay" in the same section of that Act the words "and under the administration of the Chief Commissioner of British Baluchistan" shall be added. II of 1874.

Substitution of new paragraph for first paragraph of section 37, Act II, 1874.

11. (*1*) For the first paragraph of section 37 of the said Act, as amended by section 5 of the Administrator General's Act, 1881, beginning with the words "If in cases falling within section 36" and ending with the words "as if such letters had been granted to him," the following shall be substituted, namely :— IX of 1881.

"If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased obtains, within three months, a certificate from the Administrator General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a Hindu, Muhammadan, Parsi or Buddhist, or exempted under the Indian Succession Act, 1865,[1] section 332, from the X of 1865.

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 468.
[2] Printed, General Acts, Vol. II, Ed. 1898, p. 419.

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operation of that Act, the Administrator General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him ;".

IX of 1881. (2) *Repeal of part of s. 5 of the Administrator General's Act, 1881 (IX of 1881). Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Addition of new section after section 41, Act II, 1874.

12. After section 41 of the said Act the following shall be inserted, namely :—

Transfer of certain assets from British India to executor or administrator in country of domicile for distribution.

"41A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country, the holder of the certificate granted under section 36 or section 37, or the Administrator General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

Addition to section 64, Act II, 1874.

13. To section 64 of the said Act the following shall be added, namely :—

"The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely :—

(*a*) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration to his estate and effects,

(*b*) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant, and

(*c*) the relief of the immediate necessities of the family of the deceased,

and nothing in section 279, section 280 or section 281 of the Indian Succes-

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sion Act, 1865,[1] or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons, shall be held to affect the validity of any payment so caused to be made." X of 1865.

Addition to Part VI, Act II, 1874. Compliance with requisitions for returns.

14. To Part VI, and after section 66, of the said Act the following shall be added, namely:—

"67. The Administrator General shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper."

Addition to Act II, 1874, of a Part respecting the division of the Presidency of Bengal into Provinces. Division of the Presidency of Bengal into Provinces.

15. To the said Act, after Part VI and section 67 thereof, the following shall be added, namely :—

"PART VII.

Division of the Presidency of Bengal into Provinces.

68. (*1*) Notwithstanding anything in the foregoing provisions of this Act, the Governor General in Council, upon the occurrence of any vacancy in the office of the Administrator General of Bengal, may, by notification in the Gazette of India,—

(*a*) divide the Presidency of Bengal, as defined in this Act, into so many Provinces as he thinks fit,

(*b*) define the limits of each of those Provinces, and

(*c*) appoint an Administrator General for each Province,

and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely :—

(i) the office of Administrator General of Bengal shall cease to exist :

(ii) the Administrator General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Administrator General of Bengal had and performed as Administrator General therein :

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in a Province, be discharged by the Governor General in Council :

(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf, and probate or letters of administration granted to the Administrator General of the Province by the High Court so appointed

[1] Printed, General Acts, Vol. I, p. 468.

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shall have the same effect throughout the Presidency of Bengal, as defined in this Act, or, if the Court so directs, throughout British India, as, but for the abolition of the office of Administrator General of Bengal, probate or letters of administration granted to the holder of that office by the High Court at Calcutta would have had :

(v) in the foregoing provisions of this Act the word 'Presidency' shall be deemed to include a Province, the expression 'Presidency-town' the place of sitting of a High Court appointed by the Governor General in Council under clause (iv) of this sub-section, and the expression 'Advocate General' a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency :

(vi) the provisions of this Act with respect to the commission of the Administrator General of Bengal shall regulate the commission payable to the Administrator General of a Province, and

(vii) generally, the provisions of the foregoing sections of this Act with respect to the High Court at Calcutta, and the provisions of those sections or of any other enactment with respect to the Administrator General of Bengal shall, in relation to a Province, be construed, so far as may be, to apply to the High Court and Administrator General, respectively, appointed for the Province under this section.

(*2*) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Bengal into Provinces and to or in which the Administrator General of Bengal in his representative character was a party or was otherwise concerned shall be continued as if the notification had not been published, and the Administrator General of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Administrator General of Bengal.

(*3*) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (*1*).

(*4*) Notwithstanding any division of the Presidency of Bengal, as defined in this Act, into Provinces under this section, the Administrator General of the Province in which the Town of Calcutta is comprised shall be deemed to be the Administrator General for the whole of the said Presidency for the purposes of the Regimental Debts Act, 1863.[1] "

26 & 27 Vict., c. 57.

[1] Printed, Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 771.

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The Probate and Administration Act, 1881.[1]

Addition of new section after section 145, Act V, 1881. Transfer of assets from British India to executor or administrator in country of domicile for distribution.

16. After section 145 of the Probate and Administration Act, 1881,[1] the following shall be inserted, namely :— V of 1881.

"145A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons."

ACT No. III OF 1890.[2]

[*21st February, 1890.*]

An Act to amend Acts VI[3] and VII of 1884.[3]

WHEREAS it is expedient to amend the Inland Steam-vessels Act, 1884, and the Indian Steam-ships Act, 1884, in manner hereinafter appearing; It is hereby enacted as follows :— VI of 1884. VII of 1884.

Inland-Steam-vessels Act, 1884.[3]

Amendment of section 5 (3), Act VI, 1884.

1. For the definition of "inland water" in section 5, clause (3), of the Inland Steam-vessels Act, 1884, the following shall be substituted, namely :— VI of 1884.

"(3) 'inland water' means any canal, river, lake or navigable water in British India :".

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[1] Printed, General Acts, Vol. III, Ed. 1898, p. 339.

[2] Short title, "The Indian Steam-ships Law Amendment Act, 1890," *see* the Indian Short Titles Act, 1897 (XIV of 1897). General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1889, Pt. V, p. 154; for Report of the Select Committee, *see ibid*, 1890, Pt. V, p. 55; and for Proceedings in Council, *see ibid*, 1889, Pt. VI, pp. 129 and 133, and *ibid*, 1890, pp. 15 and 20.

As far as this Act amends the Inland Steam-vessels Act, 1884 (VI of 1884), it is in force in Upper Burma (except the Shan States) as being part of the original Act, declared in force there by the Burma Laws Act, 1898 (XIII of 1898).

Ss. 1 to 14 of the Act had been previously extended there by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Gazette of India, 1891, Pt. I, p. 554.

[3] Printed, General Acts, Vol. IV, Ed. 1898, pp. 713 and 740 respectively.

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2. After section 8 of the said Act the following shall be inserted, namely :— Insertion of new section after section 8.

" 8A. Before a survey under this Act is commenced, the owner or master of the steam-vessel to be surveyed shall pay to such officer as the Local Government, from time to time, appoints in this behalf— Fees in respect of surveys.

(*a*) a fee calculated on the tonnage of the steam-vessel according to the rates in the second schedule hereto annexed, or according to any other prescribed rates; and,

(*b*) when the survey is to be made in any place of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee in respect of the expense (if any) of the journey of the surveyor to the place as the Local Government, from time to time, by notification in the official Gazette, directs."

3. [*Repeal of part of section 10 (3), Act VI, 1884.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891.)*

4. (*1*) * * * * *[1] Amendment of, and addition to, section 11, Act VI, 1884.

(*2*) To [section 11 of the said Act][2] the following sub-section shall be added, namely :—

" (*4*) The Local Government may, from time to time, delegate,—

(*a*) with the previous sanction of the Governor General in Council, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (*1*), of granting a certificate of survey under that sub-section;

(*b*) of its own authority, to any person, by name or as holding an office, the function assigned to the Local Government by sub-section (*3*), of causing notice to be given of a certificate of survey being ready for delivery :

Provided, with respect to clause (*a*) of this sub-section, that no delegation of the function mentioned in that clause shall be construed to authorise the grant of a certificate of survey by the surveyor who gave the declaration of survey under section 9."

5. [*Repeal of section 12, Act VI, 1884.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

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[1] Sub-sec. (*1*), which repealed the words " fees and other " in s. 11 (*1*) of the Inland Steam-vessels Act, 1884 (VI of 1884), was repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI.

[2] The words " section 11 of the said Act " were substituted for the words " the same section " by the Repealing and Amending Act, 1891 (XII of 1891).

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Amendment of section 17, Act VI, 1884.

6. In section 17 of the said Act, between the word "which" and the word "granted", in both places where the expression "which granted" occurs, the words "or whose delegate" shall be inserted.

Amendment of section 19, Act VI, 1884.

7. In section 19, sub-section (*1*), of the said Act, after the words "on the application of the owner or master," the words "and the payment by him of such fee, not exceeding twice the amount of the fee for the previous survey, as the Local Government may require," shall be inserted.

Amendment of section 21, Act VI, 1884.

8. In section 21, sub-section (*2*), clause (*d*), of the said Act, for the words "for certificates of survey" the words "in respect of surveys" shall be substituted.

9. [*Insertion of new section after section 25, Act VI, 1884.*] *Rep. by the Inland Steam-vessels Act (1884) Amendment Act, 1891 (XIII of 1891).*

10. [*Amendment of section 26, Act VI, 1884.*] *Rep. by the Inland Steam-vessels Act (1884) Amendment Act, 1891 (XIII of 1891).*

11. [*Addition to section 29, Act VI, 1884.*] *Rep. by the Inland Steam-vessels Act (1884) Amendment Act, 1891 (XIII of 1891).*

Addition to Chapter VII, Act VI, 1884.

12. To Chapter VII of the said Act the following shall be added, namely:—

Power for Local Government to make rules for protection of passengers.

"51A. (*1*) The Local Government may also make rules for the protection of passengers in inland steam-vessels, and may by such rules require, among other matters, a sufficient quantity of fresh water to be provided free of charge in such vessels for the use of passengers, and the prices of passenger-tickets to be printed or otherwise denoted on such tickets.

(*2*) Any rule under this section may contain a provision that any owner, master or passenger committing a breach of it shall be punished with fine which may extend to fifty rupees."

Insertion of new section after section 54, Act VI, 1884.

13. After section 54 of the said Act the following shall be inserted, namely:—

Penalty for having excessive number of passengers on board.

"54A. If an inland steam-vessel has on board thereof or on or in any part thereof a number of passengers which is greater than the number of passengers set forth in the certificate of survey as the number which the vessel or the part thereof is, in the judgment of the surveyor, fit to carry, the owner and master shall, for every passenger over and above that number, be each liable to a fine which may extend to ten rupees."

Amendment of heading to second schedule, Act VI, 1884.

14. In the second schedule to the said Act, for the words and figures "*See section 12*" the words, figure and letter "*See section 8A*" shall be substituted.

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Indian Steam-ships Act, 1884.[1]

15. After section 10 of the said Act the following shall be inserted, namely :— Insertion of new section after section 10, Act VII, 1884.

"10A. Before a survey under this Act is commenced, the owner or master of the steam-ship to be surveyed shall pay to such officer as the Local Government, from time to time, appoints in this behalf— Fees in respect of surveys.

(*a*) a fee calculated on the tonnage of the steam-ship according to the rates in the schedule hereto annexed or according to any other prescribed rates ; and

(*b*) when the survey is to be made in any port of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee, in respect of the expense (if any) of the journey of the surveyor to the port as the Local Government, from time to time, by notification in the official Gazette, directs."

16. [*Repeal of part of section 12 (3), Act VII, 1884.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891.)*

17. (*1*) * * * * * *[2] Amendment of, and addition to, section 13, Act VII, 1884.

(*2*) To [section 13 of the said Act][3] the following sub-section shall be added, namely :—

"(*4*) The Local Government may, from time to time, delegate,—

(*a*) with the previous sanction of the Governor General in Council, to any person by name or as holding an office, the function, assigned to the Local Government by sub-section (*1*), of granting a certificate of survey under that sub-section ;

(*b*) of its own authority, to any person by name or as holding an office, the function, assigned to the Local Government by sub-section (*3*), of causing notice to be given of a certificate of survey being ready for delivery :

Provided, with respect to clause (*a*) of this sub-section, that no delegation of the function mentioned in that clause shall be construed to authorise the grant of a certificate of survey by the surveyor who gave the declaration of survey under section 11."

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[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 740.

[2] Sub-sec. (*1*), which repealed the words "fees and other" in s. 13 (*1*) of the Indian Steamships Act, 1884 (VII of 1884), was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] The words "section 13 of the said Act" were substituted for the words "the same section" by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI, Ed. 1898.

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18. [*Repeal of section 14, Act VII, 1884.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of section 19, Act VII, 1884.

19. In section 19 of the said Act between the word "which" and the word "granted" in both the places where the expression "which granted" occurs, the words "or whose delegate" shall be inserted.

Amendment of section 21, Act VII, 1884.

20. In section 21, sub-section (*1*), of the said Act, after the words "on the application of the owner or master," the words "and the payment by him of such fee, not exceeding twice the amount of the fee for the previous survey, as the Local Government may require," shall be inserted.

Amendment of section 24, Act VII, 1884.

21. In section 24, sub-section (*2*), clause (*d*), for the words "for certificates of survey" the words "in respect of surveys" shall be substituted.

Amendment of heading to schedule, Act VII, 1884.

22. In the schedule to the said Act, for the words and figures "*See section 14*" the words, figures and letter "*See section 10A*" shall be substituted.

ACT No. V OF 1890.[1]

[*28th February, 1890.*]

An Act to amend the Indian Forest Act, 1878,[2] and the Burma Forest Act, 1881.[3]

WHEREAS it is expedient to amend the Indian Forest Act, 1878,[2] and the Burma Forest Act, 1881;[3] It is hereby enacted as follows:— VII of 1878. XIX of 1881.

Title and commencement.

1. (*1*) This Act may be called the Forest Act, 1890: and

(*2*) It shall come into force at once.

Indian Forest Act, 1878.

Amendment of section 2, Act VII, 1878.

2. (*1*) For the definition of "Tree" in section 2 of the Indian Forest Act, 1878, the following shall be substituted, namely:— VII of 1878.

"'Tree' includes palms, bamboos, stumps, brushwood and canes:".

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1889, Pt. V, p. 201; for Report of the Select Committee, *see ibid*, 1890, Pt. V, p. 59; and for Proceedings in Council, *see ibid*, 1889, Pt. VI, pp. 150 and 154, and *ibid*, 1890, Pt. VI, pp. 16 and 25.

Ss. 1 (*1*) and 2 and 4 of this Act have been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, p. 597, *see* Calcutta Gazette, 1892, Pt. I, p. 448.

It is in force in the Angul District so far as it amends the Indian Forest Act, 1878 (VII of 1878), as being part of that Act which was extended to that district by the Angul District Regulation, 1894 (I of 1894).

[2] Printed, General Acts, Vol. III, Ed. 1893, p. 128.

[3] For Act XIX of 1881 *see* the revised edition, as modified up to 1st July, 1890, published by the Legislative Department.

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(*2*) For the definition of "Timber" in the same section the following shall be substituted, namely :—

" 'Timber' includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not:".

(*3*) For the definition of "Forest-produce" in the same section the following shall be substituted, namely :—

" 'forest-produce' includes—

(*a*) the following, whether found in, or brought from, a forest or not, that is to say :—

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers and myrabolams, and

(*b*) the following when found in, or brought from, a forest, that is to say :—

(*i*) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,

(*ii*) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(*iii*) wild animals, and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(*iv*) peat, surface-soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries):".

Amendment of section 4, Act VII, 1878.

3. For clause (*b*) of section 4 of the said Act the following shall be substituted, namely :—

" (*b*) specifying as nearly as possible the situation and limits of such land; and".

Addition to section 5, Act VII, 1878.

4. To section 5 of the said Act the words "except in accordance with rules prescribed by the Local Government" shall be added.

Amendment of section 6, Act VII, 1878.

5. For clause (*a*) of section 6 of the said Act the following shall be substituted, namely :—

" (*a*) specifying as nearly as possible the situation and limits of the proposed forest;".

Addition of new section after section 9, Act VII, 1878.

6. After section 9 of the said Act the following shall be inserted, namely :—

Treatment of claims relating to practice of

" 9A. (*1*) In the case of a claim relating to the practice of shifting cultivation, the Forest-Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the

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shifting cultivation.

practice is allowed or regulated, and submit the statement to the Local Government together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(*2*) On receipt of the statement and opinion the Local Government may make an order permitting or prohibiting the practice wholly or in part.

(*3*) If such practice is permitted wholly or in part, the Forest-Settlement-officer may arrange for its exercise—

(*a*) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

(*b*) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practise shifting cultivation therein under such conditions as he may prescribe.

All arrangements made under this sub-section shall be subject to the sanction of the Local Government.

(*4*) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the Local Government.

Amendment of section 25, Act VII, 1878.

7. For clause (*b*) of section 25 of the said Act the following shall be substituted, namely:—

"(*b*) sets fire to a reserved forest, or, in contravention of any rules made by the Local Government, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;".

Amendment of Chapters VII and VIII, Act VII, 1878.

8. (*1*) In the heading of Chapter VII of the said Act, for the words "OF THE DUTY ON TIMBER" the words "OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE" shall be substituted.

(*2*) In section 39 of the said Act, after the word "timber" in both places where the word occurs, the words "or other forest-produce" shall be inserted.

(*3*) In clause (*a*) of section 41 of the said Act, for the words "and other" the words "or other" shall be substituted.

Addition to section 41, Act VII, 1878.

(*4*) To section 41 of the said Act the following shall be added, namely:—

"The Local Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area."

Amendment of section 47, Act VII, 1878.

9. In section 47 of the said Act the words "within three months" shall be substituted for the words "within two months".

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10. To section 48 of the said Act, after the word "encumbrances" the words "not created by him" shall be added. Addition to section 48, Act VII, 1878.

11. In section 56 of the said Act, for the words "whom he deems to be entitled to the same" the words "whom the Magistrate deems to be entitled to the same" shall be substituted. Amendment of section 56, Act VII, 1878.

12. In section 63 of the said Act, after the words "before the Magistrate having jurisdiction in the case" the words "or to the officer in charge of the nearest police-station" shall be added. Amendment of section 63, Act VII, 1878.

13. (*1*) For section 67 of the said Act the following shall be substituted, namely:— Amendment of section 67, Act VII, 1878.

"67. (*1*) The Local Government may, from time to time, by notification in the official Gazette, empower a Forest-officer by name, or as holding an office,— Power to compound offences.

(*a*) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 61 or section 62, a sum of money by way of compensation for the offence which such person is suspected to have committed, and,

(*b*) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(*2*) On the payment of such sum of money, or such value, or both, as the case may be to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(*3*) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under sub-section (*1*), clause (*a*), shall in no case exceed the sum of fifty rupees."

14. After section 83 of the said Act the following shall be added, namely:— Addition of new section after section 83, Act VII, 1878.

"84. When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any duty or act, or covenants by any instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such instrument as the amount to be Recovery of penalties due under bond.

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paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872,[1] be recovered from him in case of such breach as if it were an arrear of land-revenue." IX of 1872.

15-22. [*Amendment of the Burma Forest Act, 1881 (XIX of 1881).*] *See the revised edition of Act XIX of 1881, as modified up to 1st July, 1890, published by the Legislative Department.*

ACT No. VI OF 1890.[2]

[*7th March, 1890.*]

An Act to provide for the Vesting and Administration of Property held in trust for charitable purposes.

WHEREAS it is expedient to provide for the vesting and administration of property held in trust for charitable purposes; It is hereby enacted as follows:—

Title, extent and commencement.

1. (*1*) This Act may be called the Charitable Endowments Act, 1890.

(*2*) It extends to the whole of British India, inclusive of * * * *[3] British Baluchistan; and

(*3*) It shall come into force on the first day of October, 1890.

Definition.

2. In this Act "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

Appointment and incorporation of Treasurer of Charitable Endowments.

3. (*1*) The Governor General in Council may appoint an officer of the Government by the name of his office to be Treasurer of Charitable Endowments for the territories subject to any Local Government.[4]

(*2*) Such Treasurer shall, for the purposes of taking, holding and transferring moveable or immoveable property under the authority of this Act, be a corporation sole by the name of the Treasurer of Charitable Endowments

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[1] Printed, General Acts, Vol. II, Ed. 1898, p. 299.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1889, Pt. V, p. 137; for Report of the Select Committee, *see ibid*, 1890, p. 65; and for Proceedings in Council, *see ibid*, 1889, Pt. VI, pp. 117 and 190, and 1890, *ibid*, Pt. VI, p. 37.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

The Act has been declared in force in the Santhál Parganas under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, p. 597, *see* Calcutta Gazette, 1892, Pt. I, p. 448.

[3] The words "Upper Burma, and" were repealed by the Fifth Schedule to the Burma Laws Act, 1898 (XIII of 1898).

[4] For officers appointed under the powers conferred by this section, *see* Gazette of India, 1890, Pt. I, p. 755.

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for the territories subject to the Local Government, and, as such Treasurer, shall have perpetual succession and a corporate seal, and may sue and be sued in his corporate name.

Orders vesting property in Treasurer.

4. (*1*) Where any property is held or is to be applied in trust for a charitable purpose, the Local Government, if it thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by notification in the official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the Local Government and the person or persons making the application, and the property shall thereupon so vest accordingly.

(*2*) When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.

(*3*) A Local Government shall not make an order under sub-section (*1*) for the vesting in a Treasurer of Charitable Endowments of any securities for money, except the following, namely :—

(*a*) promissory notes, debentures, stock and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland ;

(*b*) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India ;

(*c*) stock or debentures of, or shares in, Railway or other Companies, the interest whereon has been guaranteed by the Secretary of State for India in Council ;

(*d*) debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of a legislature established in British India ;

(*e*) a security expressly authorised by any order which the Governor General in Council may make in this behalf.

(*4*) An order under this section vesting property in a Treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.

Schemes for administration of property vested in the Treasurer.

5. (*1*) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the Local Government, if it thinks fit, may settle a scheme for the administration of any property which has been or is to be vested in the Treasurer of Charitable

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Endowments, and may in such scheme appoint, by name or office, a person or persons, not being or including such Treasurer, to administer the property.[1]

(2) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the Local Government may, if it thinks fit, modify any scheme settled under this section or substitute another scheme in its stead.

(3) A scheme settled, modified or substituted under this section shall, subject to the other provisions of this section, come into operation on a day to be appointed by the Local Government in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it has been modified or another such scheme has been substituted in its stead.

(4) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject-matter thereof in so far as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates.

(5) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained, and, in the opinion of the Local Government, effect can reasonably be given to them.

(6) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.

Mode of applying for vesting orders and schemes.

6. (1) The application referred to in the two last foregoing sections must be made,—

(a) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons or a majority of them; and

(b) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

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[1] For schemes settled under this section in—
(1) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. 531, 532 and 538-540;
(2) the Madras Presidency, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 240;
(3) North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and orders, Ed. 1894, pp. 142-148.

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(*2*) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.

Exercise by Governor General in Council of powers of Local Government.

7. (*1*) The Governor General in Council may exercise all or any of the powers conferred on the Local Government by sections 4 and 5.

(*2*) When the Governor General in Council has signified to the Local Government his intention of exercising any of those powers with respect to any property, that Government shall not without his previous sanction, exercise them with respect thereto.

Bare trusteeship of Treasurer.

8. (*1*) Subject to the provisions of this Act, a Treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.

(*2*) Such Treasurer shall keep a separate account of each property for the time being so vested in so far as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provision made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents.

(*3*) In the case of any property so vested other than securities for money, such Treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management and control of the property, and the application of the income thereof, as if the property had been vested in them.

Annual publication of list of properties vested in Treasurer.

9. A Treasurer of Charitable Endowments shall cause to be published annually in the local official Gazette, at such time as the Local Government may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub-section (*2*) of the last foregoing section.

Limitation of functions and powers of Treasurer.

10. (*1*) A Treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such Treasurer, take or hold any property otherwise than under the provisions of this Act, or, subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him.

(*2*) Such a direction may require the Treasurer to sell or otherwise dispose of any property vested in him, and with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is mentioned in section 4,

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sub-section (*3*), clause (*a*), (*b*), (*c*), (*d*) or (*e*), or in the purchase of immoveable property.

(*3*) When a Treasurer of Charitable Endowments is divested, by a direction of the Local Government or the Governor General in Council under this section, of any property, it shall vest in the person or persons acting in the administration thereof and be held by him or them on the same trusts as those on which it was held by such Treasurer.

Provision for continuance of office of Treasurer in certain contingencies.

11. If the office held by an officer of the Government who has been appointed to be a Treasurer of Charitable Endowments is abolished or its name is changed, the Governor General in Council may appoint the same or another officer of the Government by the name of his office to be such Treasurer, and thereupon the holder of the latter office shall be deemed for the purposes of this Act to be the successor in office of the holder of the former office.

Transfer of property from one Treasurer to another.

12. If by reason of an alteration of the limits of the territories subject to a Local Government, or for any other reason, it appears to the Governor General in Council that any property vested in a Treasurer of Charitable Endowments should be vested in another such Treasurer, he may direct that the property shall be so vested, and thereupon it shall vest in that other Treasurer and his successors as fully and effectually for the purposes of this Act as if it had been originally vested in him under this Act.

Power to frame forms and make rules.

13. The Governor General in Council may frame forms for any proceedings under this Act for which he considers that forms should be provided, and may make such rules[1] consistent with this Act as he may deem expedient for—

(*a*) prescribing the Local Government which is to exercise the powers conferred by this Act in the case of property which is, or is situated, in territories subject to two or more Local Governments;

(*b*) prescribing the fees to be paid to the Government in respect of any property vested under this Act in a Treasurer of Charitable Endowments;

(*c*) regulating the cases and mode in which schemes or any modifications thereof are to be published before they are settled or made under section 5;

(*d*) prescribing the forms in which accounts are to be kept by Treasurers

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[1] For rules made and forms prescribed under the powers conferred by this section, *see* Gazette of India, 1890, Pt. I, p. 757.

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of Charitable Endowments, and the mode in which such accounts are to be audited; and,

(*e*) generally, carrying into effect the purposes of this Act.

Indemnity to Government and Treasurer.

14. No suit shall be instituted against the Government in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or omission to perform any duty devolving on the Government under this Act, or in respect of the exercise of, or the failure to exercise, any power conferred by this Act on the Government, nor shall any suit be instituted against a Treasurer of Charitable Endowments except for divesting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him, or the income thereof where the loss or misapplication has been occasioned by or through his wilful neglect or default.

Saving with respect to Advocate General and Official Trustee.

15. Nothing in this Act shall be construed to impair the operation of section 111 of the Statute 53 George III, Chapter 155,[1] or of any other enactment for the time being in force, respecting the authority of an Advocate General at a presidency to act with respect to any charity, or of sections 8, 9, 10 and 11 of Act No. XVII of 1864 (*an Act to constitute an Office of Official Trustee*)[2] respecting the vesting of property in trust for a charitable purpose in an Official Trustee.

General controlling authority of Governor General in Council.

16. A Local Government shall, in the exercise of its powers under this Act, be subject to the control of the Governor General in Council.

THE GUARDIANS AND WARDS ACT, 1890.

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[1] The East India Company Act, 1813, printed, Collection of Statutes relating to India, Vol. I, Ed. 1881, p. 163.

[2] The Official Trustees Act, 1864, printed, General Acts, Vol. I, Ed. 1898, p. 440.

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ACT No. VIII OF 1890.[1]

[*21st March, 1890.*]

An Act to consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (*1*) This Act may be called the Guardians and Wards Act, 1890.

(*2*) It extends to the whole of British India, inclusive of * * [2] British Baluchistan; and

(*3*) It shall come into force on the first day of July, 1890.

Repeal.

2. (*1*) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof.

(*2*) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders and rules made under any of those enactments shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed and made under this Act; and

(*3*) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Saving of jurisdiction of Courts of Wards and Chartered High Courts.

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor General in Council or by a Governor or Lieutenant-Governor in Council; and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the Statute 24 and 25 Victoria, Chapter 104 (*an Act for establishing High Courts of Judicature in India*).[3]

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 77; for Report of the Select Committee, *see ibid*, 1890, Pt. V, p. 77; and for Debates in Council, *see ibid*, 1886, Supplement, pp. 419 and 666, and *ibid*, 1890, Pt. VI, pp. 33 and 45.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

The Act has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Settlement Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, p. 597, *see* Calcutta Gazette, 1892, Pt. I, p. 448.

It has been extended to the Angul District by the Angul District Regulation, 1894 (I of 1894).

It has been declared not to be in force in the Scheduled Districts in Ganjam and Vizagapatam, by notification under s. 3 (*b*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Gazette of India, 1898, Pt. I, p. 872.

[2] The words "Upper Burma, and" were repealed by the Fifth Schedule to the Burma Laws Act, 1898 (XIII of 1898).

[3] The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 713.

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4. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(*1*) "minor" means a person who, under the provisions of the Indian Majority Act, 1875,[1] is to be deemed not to have attained his majority : IX of 1875.

(*2*) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property :

(*3*) "ward" means a minor for whose person or property, or both, there is a guardian :

(*4*) "District Court" has the meaning assigned to that expression in the Code of Civil Procedure,[2] and includes a High Court in the exercise of its ordinary original civil jurisdiction : XIV of 1882.

(*5*) "the Court" means the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian ; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or, in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides :

(*6*) "Collector" means the chief officer in charge of the revenue-administration of a district,[3] and includes any officer whom the Local Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act :

(*7*) "European British subject" means an European British subject as defined in the Code of Criminal Procedure, 1882,[4] and includes any Christian of European descent : and X of 1882.

(*8*) "prescribed" means prescribed by rules made by the High Court und this Act.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (*1*) Where a minor is an European British subject, a guardian Power of parents to appoint in

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 503.
[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.
[3] For appointments of Collectors under this sub-section in—
(*1*) the Presidency of Bombay, *see* the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. cxliii ;
(*2*) the North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 148.
[4] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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case of European British subjects.

or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing,—

(*a*) by the father of the minor, or,

(*b*) if the father is dead or incapable of acting, by the mother.

(*2*) Where guardians have been appointed under sub-section (*1*) by both parents, they shall act jointly.

Saving of power to appoint in other cases.

6. In the case of a minor who is not an European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

Power of the Court to make order as to guardianship.

7. (*1*) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(*a*) appointing a guardian of his person or property, or both, or

(*b*) declaring a person to be such a guardian, the Court may make an order accordingly.

(*2*) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(*3*) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Persons entitled to apply for order.

8. An order shall not be made under the last foregoing section except on the application of—

(*a*) the person desirous of being, or claiming to be, the guardian of the minor, or

(*b*) any relative or friend of the minor, or

(*c*) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or

(*d*) the Collector having authority with respect to the class to which the minor belongs.

Court having jurisdiction to entertain application.

9. (*1*) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(*2*) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction

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in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

Form of application

XIV of 1882.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure [1] for the signing and verification of a plaint, and stating, so far as can be ascertained,—

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor;

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has, and where they reside;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the application; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

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[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 362.

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(*2*) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (*1*).

(*3*) The application must be accompanied by a declaration of the willingness of the proposed guardian to act and the declaration must be signed by him and attested by at least two witnesses.

Procedure on admission of application.

11. (*1*) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

(*a*) to be served in the manner directed in the Code of Civil Procedure [1] XIV of 1882. on—

(i) the parents of the minor if they are residing in British India,

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(*b*) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(*2*) The Local Government may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (*1*), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(*3*) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (*2*).

Power to make interlocutory order for production of minor and interim protection of person and property.

12. (*1*) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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(*2*) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (*1*) for her production shall require her to be produced in accordance with the customs and manners of the country.

(*3*) Nothing in this section shall authorise—

(*a*) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(*b*) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

Hearing of evidence before making of order.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Simultaneous proceedings in different Courts.

14. (*1*) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(*2*) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

(*3*) In any other case in which proceedings are stayed under sub-section (*1*), the Courts shall report the case through the Local Government to the Governor General in Council, and the Governor General in Council shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

Appointment or declaration of several guardians.

15. (*1*) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(*2*) On the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(*3*) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child has, by will or other instrument to take effect on her death, appointed a guardian of the child, the

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Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

Matters to be considered by the Court in appointing guardian.

17. (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but, other things being equal, if the minor is a male of tender years or a female, the minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

Appointment or declaration of Collector in virtue of office.

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

Guardian not to be appointed by

19. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the

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superintendence of a Court of Wards, or to appoint or declare a guardian of the person— **the Court in certain cases.**

(*a*) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,

(*b*) subject to the provisions of this Act with respect to European British subjects, of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or

(*c*) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

CHAPTER III.

Duties, Rights and Liabilities of Guardians.

General.

Fiduciary relation of guardian to ward.

20. (*1*) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(*2*) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

Capacity of minors to act as guardians.

21. A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

Remuneration of guardian.

22. (*1*) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(*2*) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs.

Control of Collector as guardian.

23. A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the Local

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Government or of such authority as that Government, by notification in the official Gazette,[1] appoints in this behalf.

Guardian of the Person.

Duties of guardian of the person.

24. A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

Title of guardian to custody of ward.

25. (*1*) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(*2*) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882.[2] X of 1882.

(*3*) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

Removal of ward from jurisdiction.

26. (*1*) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(*2*) The leave granted by the Court under sub-section (*1*) may be special or general, and may be defined by the order granting it.

Guardian of Property.

Duties of guardian of property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

Powers of testamentary guardian.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been

[1] For notifications appointing authorities to whose control Collectors appointed under the Act shall be subject, in—
(*1*) the Presidency of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 542;
(*2*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 148.

[2] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

Limitation of powers of guardian of property appointed or declared by the Court.

29. Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(*a*) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or

(*b*) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

Voidability of transfers made in contravention of section 28 or section 29.

30. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

Practice with respect to permitting transfers under section 2.

31. (*1*) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(*2*) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(*3*) The Court may in its discretion attach to the permission the following among other conditions, namely :—

(*a*) that a sale shall not be completed without the sanction of the Court;

(*b*) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs;

(*c*) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(*d*) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom

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or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(*4*) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

Variation of powers of guardian of property appointed or declared by the Court.

32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.

33. (*1*) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(*2*) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(*3*) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

Obligations on guardian of property appointed or declared by the Court.

34. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall,—

(*a*) if so required by the Court, give a bond as nearly as may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(*b*) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

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(*c*) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(*d*) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs; and

(*e*) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

Suit against guardian where administration-bond was taken.

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

Suit against guardian where administration-bond was not taken.

36. (*1*) Where a guardian appointed as declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(*2*) The provisions of sub-section (*1*) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act.[1]

XIV of 1882.

General liability of guardian as trustee.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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Termination of Guardianship.

Right of survivorship among joint guardians.

38. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

Removal of guardian.

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely :—

(*a*) for abuse of his trust;

(*b*) for continued failure to perform the duties of his trust;

(*c*) for incapacity to perform the duties of his trust;

(*d*) for ill-treatment, or neglect to take proper care, of his ward;

(*e*) for contumacious disregard of any provision of this Act or of any order of the Court;

(*f*) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward;

(*g*) for having an interest adverse to the faithful performance of his duties;

(*h*) for ceasing to reside within the local limits of the jurisdiction of the Court;

(*i*) in the case of a guardian of the property, for bankruptcy or insolvency;

(*j*) by reason of the guardianship of the guardian ceasing or being liable to cease, under the law to which the minor is subject:

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed—

(*a*) for the cause mentioned in clause (*g*) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(*b*) for the cause mentioned in clause (*h*) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

Discharge of guardian.

40. (*1*) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(*2*) If the Court finds that there is sufficient reason for the application, it shall discharge him, and if the guardian making the application is the

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Collector and the Local Government approves of his applying to be discharged, the Court shall in any case discharge him.

Cessation of authority of guardian.

41. (*1*) The powers of a guardian of the person cease—

(*a*) by his death, removal or discharge;

(*b*) by the Court of Wards assuming superintendence of the person of the ward;

(*c*) by the ward ceasing to be a minor;

(*d*) in the case of a female ward by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or,

(*e*) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(*2*) The powers of a guardian of the property cease—

(*a*) by his death, removal or discharge;

(*b*) by the Court of Wards assuming superintendence of the property of the ward; or

(*c*) by the ward ceasing to be a minor.

(*3*) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(*4*) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

Appointment of successor to guardian dead, discharged or removed.

42. When a guardian appointed or declared by the Court is discharged or under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

CHAPTER IV.

Supplemental Provisions.

Orders for

43. (*1*) The Court may, on the application of any person interested or of

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regulating conduct or proceedings of guardians, and enforcement of those orders.

its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(*2*) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(*3*) Except where it appears that the object of making an order under sub-section (*1*) or sub-section (*2*) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (*1*), to the guardian or, in a case under sub-section (*2*), to the guardian who has not made the application.

(*4*) In case of disobedience to an order made under sub-section (*1*) or sub-section (*2*), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure,[1] in a case under sub-section (*1*), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (*2*), as if the guardian who made the application were the plaintiff and the other guardian were the defendant. XIV of 1882.

(*5*) Except in a case under sub-section (*2*), nothing in this section shall apply to a Collector who is, as such, a guardian.

Penalty for removal of ward from jurisdiction.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for contumacy.

45. (*1*) In the following cases, namely :—

(*a*) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (*1*), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (*1*), or

(*b*) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (*b*) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (*c*) of that section,

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (*d*) of that section, or

(*e*) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (*3*),

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(*2*) If a person who has been released from detention on giving an undertaking under sub-section (*1*) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

Reports by Collectors and Subordinate Courts.

46. (*1*) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

(*2*) For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.[1]

XIV of 1882.

Orders appealable.

47. An appeal shall lie to the High Court from an order made by a District Court,—

(*a*) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or,

(*b*) under section 9, sub-section (*3*), returning an application; or,

(*c*) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or,

(*d*) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or,

(*e*) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section; or,

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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(*f*) under section 32, defining, restricting or extending the powers of a guardian; or,

(*g*) under section 39, removing a guardian; or

(*h*) under section 40, refusing to discharge a guardian; or,

(*i*) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order; or,

(*j*) under section 44 or section 45, imposing a penalty.

Finality of other orders.

48. Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure,[1] an order made under this Act shall be final and shall not be liable to be contested by suit or otherwise. XIV of 1882.

Costs.

49. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

Power of High Court to make rules.

50. (*1*) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act—

(*a*) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts;

(*b*) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(*c*) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

(*d*) as to the circumstances in which such requisitions as are mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of section 34 should be made;

(*e*) as to the preservation of statements and accounts delivered and exhibited by guardians;

(*f*) as to the inspection of those statements and accounts by persons interested;

(*g*) as to the custody of money, and securities for money, belonging to wards;

(*h*) as to the securities on which money belonging to wards may be invested;

(*i*) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court; and,

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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(*j*) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(*2*) Rules under clauses (*a*) and (*i*) of sub-section (*1*) shall not have effect until they have been approved by the Local Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

Applicability of Act to guardians already appointed by Court.

51. A guardian appointed by or holding a certificate of administration from a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

IX of 1875.

Amendment of Indian Majority Act.

52. In section 3 of the Indian Majority Act, 1875,[1] for the words "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards" the following shall be substituted, namely:—

"every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure,[2] has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age."

XIV of 1882.

XIV of 1882.

Amendment of Chapter XXXI of the Code of Civil Procedure.

53. Chapter XXXI of the Code of Civil Procedure[2] shall be amended as follows, namely:—

A.—To section 440 of the said Code the following shall be added, namely:—

"If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian except with the leave of the Court granted after notice to such guardian and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so."

B.—To section 443 of the said Code the following shall be added, namely:—

"Where an authority competent in this behalf has appointed or

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[1] Printed, General Acts, Vol. II, Ed. 1898, p. 503.
[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 263.

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declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed."

C.—After section 446 of the said Code the following shall be added, namely:—

"If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor."

D.—For section 461 of the said Code the following shall be substituted namely:—

Receipt by next friend or guardian *ad litem* of property under decree for minor.

"461. (*1*) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—

(*a*) by way of compromise before decree or order, or

(*b*) under a decree or order in favour of the minor.

"(*2*) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application."

E.—For section 464 of the said Code as amended by the Civil Procedure Code Amendment Act, 1888,[1] the following shall be substituted, namely:— VII of 1888.

Princes and Chiefs and wards of Court.

"464. Nothing in this Chapter applies to a Sovereign Prince or ruling Chief suing or being sued in the name of his State or being sued, by direction of the Governor General in Council or a Local Government, in the name of an agent or in any other name, or shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind."

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[1] Printed, *Supra*, p. 232.

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THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title or subject.	Extent of repeal.
	Acts of the Governor General in Council.	
XIV of 1858	Minors (Madras)	The whole.
XL of 1858	Minors (Bengal)	So much as has not been repealed.
IX of 1861	Minors	The whole.
XX of 1864	Minors (Bombay)	The whole.
[1] XIV of 1869	Bombay Civil Courts Act, 1869.	So much of the last paragraph of section 16 as has not been repealed.
[2] VII of 1870	Court-fees Act, 1870	Section 19H, and article 10 of Schedule I.
[3] IV of 1872	Punjab Laws Act, 1872	So far as it relates to Act XL of 1858.
[4] XIX of 1873	North-Western Provinces Land-revenue Act, 1873.	Section 258.
XIII of 1874	European British Minors Act, 1874.	The whole.
[5] XV of 1874	Laws Local Extent Act, 1874	So far as it relates to any enactment repealed by this Act.
[6] XX of 1875	Central Provinces Laws Act, 1875.	So far as it relates to Act XL of 1858.
[7] XVIII of 1876	Oudh Laws Act, 1876	So far as it relates to Act XL of 1858.
[7] XIII of 1879	Oudh Civil Courts Act, 1879	Clause (1) of section 25 relating to proceedings under Acts XL of 1858 and IX of 1861.
[8] XIV of 1882	Code of Civil Procedure	The second paragraph of section 443.

[1] Printed, Bombay Code, Vol. I, Ed. 1894, p. 127.
[2] Printed, General Acts, Vol. II, Ed. 1898, p. 124.
[3] See the revised edition, as modified up to 1st July, 1891, published by the Legislative Department.
[4] Printed, North-Western Provinces and Oudh Code, Ed. 1892, p. 195.
[5] Printed, General Acts, Vol. II, Ed. 1898, p. 483.
[6] Printed, Central Provinces Code, Ed. 1891, p. 76.
Printed, North-Western Provinces and Oudh Code, Ed. 1892, pp. 318 and 353, respectively.
[8] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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THE SCHEDULE—*continued.*

Number and year.	Title or subject.	Extent of repeal.
	Acts of the Governor General in Council—contd.	
[1] XVIII of 1884	Punjab Courts Act, 1884	So much of section 29 as has not been repealed.
[2] XVII of 1885	Central Provinces Government Wards Act, 1885.	Section 5.
[3] XII of 1887	Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.	Clause (*b*) of section 23, sub-section (*2*).
[4] XI of 1889	Lower Burma Courts Act, 1889	The words "to be and" in section 99, sub-section (*1*), and section 102, so far as it relates to Act XIII of 1874.
	Madras Regulations.	
[5] V of 1804	Court of Wards	Section 20 and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
[6] X of 1831	Minors' Estates	Section 3.
	Regulations under the Statute 33 Victoria, Chapter 3.	
[6] IX of 1874	Arakan Hill District Laws	So far as it rleates to Acts XL of 1858 and IX of 1861.

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[1] *See* the revised edition, as modified up to 1st April, 1891, published by the Legislative Department.
[2] Printed, Central Provinces Code, Ed. 1891, p. 270.
[3] Latest edition is printed, Assam Code, Ed. 1897, p. 189.
[4] Printed, Burma Code, Ed. 1889, p. 299.
[5] Printed, Madras Code, Ed. 1888, pp. 29 and 102, respectively.
[6] Printed, Burma Code, Ed. 1889, p. 353.

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THE FIRST SCHEDULE—ENACTMENTS REPEALED.
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ACT No. IX OF 1890.[1]

[*21st March, 1890.*]

An Act to consolidate, amend and add to the law relating to Railways in India.

WHEREAS it is expedient to consolidate, amend and add to the law relating to railways in India; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (*1*) This Act may be called the Indian Railways Act, 1890.

(*2*) It extends to the whole of British India, inclusive * * *[2] and (in so far as it has been or may be extended under the provisions of the Sindh-Pishin Railway Act, 1887),[3] of British Baluchistan, and applies also to all subjects of Her Majesty within the dominions of Princes and States

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1888, p. 133; for the Report of the Select Committee, *see ibid*, 1890, Pt. V, p. 23; and for Debates in Council, *see ibid*, Pt. VI, 1888, pp. 124 and 137, and *ibid*, 1890, Pt. VI, pp. 15 and 48.

Act IX of 1890 has been declared in force, by notification under the Scheduled Districts Act, 1874, in the following Scheduled Districts, namely :—

Tarái Parganas, North-Western Provinces, *see* Gazette of India, 1890, Pt. I, p. 596; the Districts of Hazáribágh, Lohárdaga (including at this time the present District of Palamau, which was separated in 1894) and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see ibid*, p. 359.

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898). [The Act was previously in force there *proprio vigore*.]

It has been applied to the Santhál Parganas by notification under the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, p. 597, *see* Calcutta Gazette, 1890, Pt. I, p. 757.

[2] The words "of Upper Burma," were repealed by the Fifth Schedule to the Burma Laws Act, 1898 (XIII of 1898).

[3] Printed, Baluchistan Code, Ed. 1890, p. 49.

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in India in alliance with Her Majesty, and to all Native subjects of Her Majesty without and beyond British India and those dominions; and

(3) It shall come into force on the first day of May, 1890.

[1] 2. (1) On and from that day the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof. Repeal.

(2) But all rules, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications published under any of those enactments, or under any enactment repealed by any of them, shall, so far as they are consistent with this Act, be deemed to have been respectively made, given, approved, conferred and published under this Act.

(3) Any enactment or document referring to any of those enactments or to any enactment repealed by any of them, shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(1) "tramway" means a tramway constructed under the Indian Tramways Act, 1886,[2] or any special Act relating to tramways: XI of 1886.

(2) "ferry" includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry:

(3) "inland water" means any canal, river, lake or navigable water in British India:

(4) "railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway;

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway; and

(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway:

(5)[3] "railway company" includes any persons, whether incorporated or

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[1] So much of this section and the First Schedule as relates to the Upper Burma Laws Act, 1886 (XX of 1886), has been repealed by the Burma Laws Act, 1898 (XIII of 1898), *see* the Fifth Schedule to the Act.

[2] Printed, *supra*, p. 73.

[3] *Cf.* the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 2.

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not, who are owners or lessees of a railway or parties to an agreement for working a railway :

(*6*) "railway administration" or "administration", in the case of a railway administered by the Government or a Native State, means the Manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company :

(*7*) "railway servant" means any person employed by a railway administration in connection with the service of a railway :

(*8*) "Inspector" means an Inspector of Railways appointed under this Act :

(*9*) [1] "goods" includes inanimate things of every kind :

(*10*) [2] "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks and trollies of all kinds :

(*11*) [3] "traffic" includes rolling-stock of every description as well as passengers, animals and goods :

(*12*) "through traffic" means traffic which is carried over the railways of two or more railway administrations :

(*13*) [4] "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods :

(*14*) [5] "terminals" includes charges in respect of stations, sidings, wharves, depôts, warehouses, cranes and other similar matters, and of any services rendered thereat :

(*15*) "pass" means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorising the person to whom it is given to travel as a passenger on a railway gratuitously :

(*16*) "ticket" includes a single ticket, a return ticket and a season ticket :

(*17*) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy : and

(*18*) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act.

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[1] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 3.
[2] *Cf.* the Railway Rolling Stock Protection Act, 1872 (35 & 36 Vict., c. 50), s. 2.
[3] *Cf.* the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 1.
[4] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 3.
[5] *Cf.* the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 55.

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CHAPTER II.

INSPECTION OF RAILWAYS.

Appointment and duties of Inspectors.

[1] 4. (1) The Governor General in Council may appoint persons, by name or by virtue of their office, to be Inspectors of Railways.[2]

(2) The duties of an Inspector of Railways shall be—

(a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor General in Council as required by this Act;

(b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the Governor General in Council may direct;

(c) to make inquiry under this Act into the cause of any accident on a railway;

(d) to perform such other duties as are imposed on him by this Act or any other enactment for the time being in force relating to railways.

Powers of Inspectors.

[3] 5. An Inspector shall, for the purpose of any of the duties which he is required or authorised to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code,[4] and, subject to the control of the Governor General in Council, shall for that purpose have the following powers, namely:— XLV of 1860.

(a) to enter upon and inspect any railway or any rolling-stock used thereon;

(b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration;

(c) to require the production of any book or document belonging to or in the possession or control of any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

Facilities

6. A railway administration shall afford to the Inspector all reasonable

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[1] *Cf.* the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 3.

[2] For persons appointed to be Inspectors of Railways under this section, *see* Government of India (Railway) Circular No. XV, dated 4th December, 1888.

[3] *Cf.* the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 4.

[4] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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to be afforded to Inspectors.

facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act.

CHAPTER III.

Construction and Maintenance of Works.

Authority of railway administrations to execute all necessary works.

[1] 7. (1) Subject to the provisions of this Act and, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and, subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force :—

(a) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, [2][lines of railway,] ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper;

(b) alter the course of any rivers, brooks, streams or water-courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams or water-courses or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(d) erect and construct such houses, warehouses, offices and other buildings and such yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as the railway administration thinks proper;

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[1] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 16.

[2] These words were added by the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896), s. 1, printed, General Acts, Vol. VI.

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(*e*) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them, and substitute others in their stead; and

(*f*) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

(*2*) The exercise of the powers conferred on a railway administration by sub-section (*1*) shall be subject to the control of the Governor General in Council.

Alteration of pipes, wires and drains.

8. A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water or compressed air or the position of any electric wire or of any drain not being a main drain:

Provided that—

(*a*) when the railway administration desires to alter the position of any such pipe, wire or drain it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority[1] or company having control over the pipes, wire or drain, or, when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is;

(*b*) a local authority, company or person receiving notice under proviso (*a*) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainage, as the case may be.

Temporary entry upon land for repairing or preventing accident.

[2] **9.** (*1*) The Governor General in Council may authorise any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose.

(*2*) In case of necessity the railway administration may enter upon the lands and do the works aforesaid without having obtained the previous sanction of the Governor General in Council, but in such a case shall, within

[1] For definition of "local authority," *see* s. 135 (*5*), *infra*, p. 456, and the General Clauses Act, 1897 (X of 1897), s. 3 (*28*), printed, General Acts, Vol. VI.

[2] *Cf.* The Railway Regulation Act, 1842 (5 & 6 Vict., c 55), s. 14.

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seventy-two hours after such entry, make a report to the Governor General in Council, specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine if the Governor General in Council, after considering the report, considers that the exercise of the power is not necessary for the public safety.

Payment of compensation for damage caused by lawful exercise of powers under section 7, 8 or 9.

10. (*1*) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof.

(*2*) A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be [1][with the provisions of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894,[2] and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation]. I of 1894.

Accommodation works.

[3] **11.** (*1*) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely :—

(*a*) such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the Governor General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(*b*) all necessary arches, tunnels, culverts, drains, water-courses or other passages, over or under or by the sides of the railway, of such dimensions as will, in the opinion of the Governor General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(*2*) Subject to the other provisions of this Act, the works specified in clauses (*a*) and (*b*) of sub-section (*1*) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in

---

[1] These words and figures were substituted for the words and figures "with the provisions of sections 11 to 15, both inclusive, and sections 18 to 42, both inclusive, of the Land Acquisition Act, 1870, and the provisions of sections 57 and 58 of that Act shall apply to the award of compensation" by the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896), s. 2, printed, General Acts, Vol. VI.

[2] Printed, General Acts, Vol. VI, Ed. 1898.

[3] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 68.

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such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(3) The foregoing provisions of this section are subject to the following provisos, namely:—

(a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made;

(b) [1] save as hereinafter in this Chapter provided, a railway administration shall not, except on the requisition of the Governor General in Council, be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;

(c) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(4) [2] The Governor General in Council may appoint a time for the commencement of any work to be executed under sub-section (1), and if for fourteen days next after that time the railway administration fails to commence the work or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the Governor General in Council may execute it and recover from the railway administration the cost incurred by him in the execution thereof.

Power for owner, occupier or local authority to cause additional accommodation works to be made.

[3] 12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the Local Government or a local authority desires to construct a public road or other work across, under or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as

[1] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 73.
[2] *Cf. ibid*, s. 70.
[3] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 71.

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he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorised by the Governor General in Council.

Fences, screens, gates and bars.

[1]13. The Governor General in Council may require that, within a time to be specified in the requisition or within such further time as he may appoint in this behalf,—

(*a*) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;

(*b*) [2] any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway;

(*c*) [3] suitable gates, chains, bars, stiles or handrails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;

(*d*) [4] persons be employed by a railway administration to open and shut such gates, chains or bars.

Over and under bridges.

[5]14. (*1*) Where a railway administration has constructed a railway across a public road on the level, the Governor General in Council may at any time, if it appears to him necessary for the public safety, require the railway administration, within such time as he thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the Governor General in Council to be best adapted for removing or diminishing the danger arising from the level-crossing.

(*2*) [6] The Governor General in Council may require, as a condition of making a requisition under sub-section (*1*), that the local authority, if any, which maintains the road shall undertake to pay the whole of the cost to the railway administration of complying with the requisition or such portion of the cost as the Governor General in Council thinks just.

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[1] *Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 10.
[2] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 63.
[3] *Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 9.
[4] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 48.
[5] *Cf.* the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 7.
[6] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 46, and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 16.

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Removal of trees dangerous to or obstructing the working of a railway.

[1]15. (*1*) In either of the following cases, namely :—

(*a*) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic,

(*b*) when a tree obstructs the view of any fixed signal,

the railway administration may, with the permission of any Magistrate, fell the tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction, as the case may be.

(*2*) In case of emergency the power mentioned in sub-section (*1*) may be xercised by a railway administration without the permission of a Magistrate.

(*3*) Where a tree felled or otherwise dealt with under sub-section (*1*) or sub-section (*2*) was in existence before the railway was constructed or the signal was fixed, any Magistrate may, upon the application of the persons interested in the tree, award to those persons such compensation as he thinks reasonable.

(*4*) Such an award, subject, where made in a presidency-town by any Magistrate other than the Chief Presidency Magistrate, or where made elsewhere by any Magistrate other than the District Magistrate, to revision by the Chief Presidency Magistrate, or the District Magistrate, as the case may be, shall be final.

(*5*) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.

CHAPTER IV.

Opening of Railways.

Right to use locomotives.

[2]16. (*1*) A railway administration may, with the previous sanction of the Governor General in Council, use upon a railway locomotive engines or other motive power, and rolling-stock to be drawn or propelled thereby.[3]

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[1] *Cf.* the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 24.

[2] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 86.

[3] For notifications sanctioning the use of motive power and rolling-stock on railways in—

(*1*) Assam, *see* Gazette of India, 1883, Pt. I, p. 21 ; *ibid*, 1885, Pt. I, p. 588 ; and *ibid*, 1893, Pt. I, p. 178 ;

(*2*) Bengal, *see* Gazette of India, 1879, Pt. I, p. 428 ; *ibid*, 1880, Pt. I, p. 30 ; *ibid*, 1883, Pt. I, p. 21 ; *ibid*, 1884, Pt. I, p. 322 ; *ibid*, 1885, Pt. I, p. 580 ; *ibid*, 1888, Pt. I, p. 148 ; and others too numerous to be included in this footnote ;

(*3*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. cxliii and cxliv ;

(*4*) Burma, *see* the Burma Laws List, Ed. 1897, p. 303 ;

(*5*) Central Provinces, *see* Gazette of India, 1885, Pt. I, p. 683, etc. ;

(*6*) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 241 and 242 ;

(*7*) North-Western Provinces and Oudh, *see* Gazette of India, 1879, Pt. I, p. 428 ; *ibid*, 1884, Pt. I, p. 322 ; and *ibid*, 1885, Pt. I, p. 396, etc. ;

(*8*) Punjab, *see* Gazette of India, 1879, Pt. I, p. 428 ; *ibid*, 1884, Pt. I, p. 322 ; *ibid*, 1885, Pt. I, p. 588, etc.

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(2) But rolling-stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act.

Notice of intended opening of a railway.

17. (1) Subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any railway for the public carriage of passengers, give to the Governor General in Council notice in writing of its intention.

(2) The Governor General in Council may in any case, if he thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1).

Sanction of the Government a condition precedent to the opening of a railway.

18. A railway shall not be opened for the public carriage of passengers until the Governor General in Council, or an Inspector empowered by the Governor General in Council in this behalf, has by order sanctioned the opening thereof for that purpose.

Procedure in sanctioning the opening of a railway.

19. (1) The sanction of the Governor General in Council under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the Governor General in Council—

(a) that he has made a careful inspection of the railway and rolling-stock;

(b) that the moving and fixed dimensions prescribed by the Governor General in Council have not been infringed;

(c) [1] that the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock are such as have been prescribed by the Governor General in Council;

(d) that the railway is sufficiently supplied with rolling-stock;

(e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act; and

(f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

(2) [2] If in the opinion of the Inspector the railway cannot be so opened without danger to the public using it, he shall state that opinion together with the grounds therefor to the Governor General in Council, and the Governor General in Council may thereupon order the railway administration to postpone the opening of the railway.

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of

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[1] *Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 16.
[2] *Cf. ibid*, s. 6.

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the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with or the Governor General in Council is otherwise satisfied that the railway can be opened without danger to the public using it.

(*4*) The sanction given under this section may be either absolute or subject to such conditions as the Governor General in Council thinks necessary for the safety of the public.

(*5*) When sanction for the opening of a railway is given subject to conditions and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Governor General in Council.

Application of the provisions of the three last foregoing sections to material alterations of a railway.

[1] **20.** (*1*) The provisions of sections 17, 18 and 19 with respect to the opening of a railway shall extend to the opening of the works mentioned in sub-section (*2*) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway.

(*2*) The works referred to in sub-section (*1*) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18 and 19 apply or are extended by this section.

Exceptional provision.

21. When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely :—

(*a*) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not in his opinion be attended with danger to the public using the line and works of the diversion; and

(*b*) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway.

Power to

22. The Governor General in Council may make rules defining the cases

[1] *Cf.* the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 5.

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make rules with respect to the opening of railways.

in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with.

Power to close an opened railway.

23. (*1*) When, after inspecting any open railway used for the public carriage of passengers, or any rolling-stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state that opinion, together with the grounds therefor, to the Governor General in Council; and the Governor General in Council may thereupon order that the railway be closed for the public carriage of passengers, or that the use of the rolling-stock so specified be discontinued, or that the railway or the rolling-stock so specified be used for the public carriage of passengers on such conditions only as the Governor General in Council may consider necessary for the safety of the public.

(*2*) [1] An order under sub-section (*1*) must set forth the grounds on which it is founded.

Re-opening of a closed railway.

24. (*1*) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected, and its re-opening sanctioned, in accordance with the provisions of this Act.

(*2*) When the Governor General in Council has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use and the Governor General in Council has sanctioned its use.

(*3*) When the Governor General in Council has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the Governor General in Council.

Delegation of powers under this Chapter to Inspectors.

25. (*1*) The Governor General in Council may, by general or special order, authorise the discharge of any of his functions under this Chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function or attach thereto any condition which the Governor General in Council might have imposed if the sanction or order had been given by himself.

(*2*) A condition imposed under sub-section (*1*) shall for all the purposes of this Act have the same effect as if it were attached to a sanction or order given by the Governor General in Council.

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[1] *Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 16.

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CHAPTER V.

Railway Commissions and Traffic Facilities.

Railway Commissions.

Constitution of Railway Commission.

[1] **26.** (*1*) For the purposes of this Chapter the Governor General in Council shall, as occasion may in his opinion require, appoint a commission, styled a Railway Commission (in this Act referred to as the Commissioners), and consisting of one Law Commissioner and two Lay Commissioners.

(*2*) The Commissioners shall sit at such times and in such places as the Governor General in Council appoints.

(*3*) The Law Commissioner shall be such Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882,[2] in the place where the Commissioners are to sit as, in the case of a High Court established under the Statute 24 & 25 Victoria, Chapter 104,[3] the Chief Justice or, in the case of the Chief Court of the Punjab, the Senior Judge or, in the case of the Court of the Recorder of Rangoon, the Chief Commissioner of Burma may, on the request of the Governor General in Council, assign by writing under his hand.

X of 1882.

(*4*) The Lay Commissioners shall be appointed by the Governor General in Council, and one at least of them shall be of experience in railway business.

Registration of jurisdiction of Railway Commission to cases specially referred.

27. The Commissioners shall take cognizance of such cases only as are referred to them by the Governor General in Council.

Reference of cases to Railway Commission.

28. In any of the following circumstances, namely :—

(*a*) where complaint is made to the Governor General in Council of any thing done or any omission made by a railway administration in violation or contravention of any provision of this Chapter ;

(*b*) where any difference which is under the provisions of any agreement required or authorised to be referred to arbitration arises between railway administrations, and the railway administrations apply to

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[1] *Cf.* the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31); the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 48) ; and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25).

[2] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

[3] The Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 713.

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the Governor General in Council to have it referred to the Commissioners;

(c) [1] where any other difference, being a difference between railway administrations or one to which a railway administration is a party, arises, and the parties thereto apply to the Governor General in Council to have it referred to the Commissioners;

the Governor General in Council may, if he thinks fit, refer the case to the Commissioners for decision.

Constitution of Railway Commission in session.

29. The three Commissioners shall attend at the hearing of any case referred to them for decision under this Chapter, and the Law Commissioner shall preside at the hearing.

Power of Railway Commission.

30. (1) In hearing any such case the Commissioners shall have all the powers which may be exercised in the hearing of an original civil suit by a High Court.

(2) The decision shall, if the Commissioners differ in opinion, be in accordance with the opinion of the majority, and the final order in the case shall be by way of injunction and not otherwise.

(3) [2] At the hearing the Commissioners may permit any party to appear before them either by himself or by any legal practitioner entitled to practise in any High Court.

Appeals from orders of Railway Commission.

31. (1) An appeal shall not lie from any order of the Commissioners upon any question of fact on which two of the Commissioners are agreed.

(2) Subject to the provisions of sub-section (1), an appeal shall lie from an order of the Commissioners—

(a) where the Law Commissioner was the Recorder or Additional Recorder of Rangoon, to the High Court of Judicature at Fort William in Bengal, and

(b) in any other case, to the High Court of which the Law Commissioner was a member.

(3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many Judges, not being fewer than three, as the High Court may by rule prescribe.

(4) In the hearing of the appeal the High Court shall, subject to the other provisions of this Chapter, have all the powers which it has as an Appellate Court under the Code of Civil Procedure,[3] and may make any order which the Commissioners could have made. XIV of 1882.

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[1] *Cf.* the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 48), s. 9.
[2] *Cf.* the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 50.
[3] Printed, General Acts, Vol. IV, Ed. 1898, p. 262.

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32. Notwithstanding any appeal to the High Court from an order of the Commissioners, the order shall, unless the Commissioners or the majority of them see fit to suspend it, continue in operation until it is reversed or varied by that Court. **Operation of orders of Railway Commission.**

33. (*1*) The Commissioners, in the exercise of their jurisdiction under this Chapter, may, from time to time, with the general or special sanction of the Governor General in Council, call in one or more persons of engineering or other technical knowledge to act as assessors. **Assessors.**

(*2*) There shall be paid to such persons such remuneration as the Governor General in Council upon the recommendation of the Commissioners may direct.

34. The Governor General in Council may make rules regulating proceedings before the Commissioners and enabling the Commissioners to carry into effect the provisions of this Chapter, and prescribing fees to be taken in relation to proceedings before the Commissioners.[1] **Powers of the Governor General in Council to make rules for the purposes of this Chapter.**

35. The costs of and incidental to any proceedings before the Commissioners or the High Court under this Chapter shall be in the discretion of the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court of which the Law Commissioner was a Judge as if the payment had been ordered by a decree of a High Court. **Costs of proceedings under this Chapter.**

[2]**36.** The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners or on appeal before the High Court, or of the representative of any such person, that an injunction made under this Chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment. **Execution of order of Railway Commission and High Court.**

(*2*) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making the application under sub-section (*1*) or to the Government.

37. A document purporting to be signed by the Commissioners, or any of **Evidence of documents.**

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[1] For such rules, *see* Gazette of India, 1892, Pt. I, p. 658.
[2] *Cf.* the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 3.

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them, shall be received in evidence without proof of the signature, and shall, until the contrary is proved, be deemed to have been so signed and to have been duly executed or issued by the Commissioners.

Submission to the Governor General in Council of special reports by Railway Commission.

38. The Commissioners shall, as soon as may be after the disposal of each case referred to them, submit to the Governor General in Council a special report on the case, and the Governor General in Council shall cause the report to be published in such manner as he thinks fit for the information of persons interested in the subject-matter thereof.

Dissolution of Railway Commission.

39. Except for the purpose of the last foregoing section, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them :

Provided that, on the application of any person who was a party to the proceedings before the Commissioners, or of the representative of any such person, the Governor General in Council may, if he thinks fit, in any case in which the order passed by the Commissioners is not open to appeal, re-appoint the Commissioners for the purpose of hearing an application for a review of their decision and of granting the same and re-hearing the case if they think that the case should be re-heard.

Finality of orders of Railway Commission subject to the foregoing provisions of this Chapter.

40. Subject to the foregoing provisions of this Chapter and to any direction of Her Majesty in Council, an order of the Commissioners shall be final and shall not be questioned in or restrained by any Court

Bar of jurisdiction of ordinary Courts in certain matters cognizable by Railway Commission.

[1] **41.** Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter or of any order made thereunder by the Commissioners or by a High Court.

Traffic Facilities.

Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable

[2] **42.** (*1*) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock.

(*2*) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person

[1] *Cf.* the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 6.

[2] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 90 ; the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 2 ; and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 25.

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or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. delay and without partiality.

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one mile of the terminus or station of another railway administration,[1] shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway of any other railway administration at through rates:

Provided as follows:—

(a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund;

(b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are;

(c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period;

(d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the Governor General in Council may, if he

[1] *Cf.* the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 1.

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thinks fit, on the request of any of the railway administrations, refer the case to the Commissioners for their decision;

(*e*) if the objection is to the granting of the rate or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interests of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may seem to the Commissioners to be just and reasonable;

(*f*) if the objection is only to the apportionment of the rate, and the case has been referred to the Commissioners, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective: in the case of any other objection the operation of the rate shall be suspended until the Commissioners make their order in the case;

(*g*) the Commissioners in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof;

(*h*) the Commissioners shall not in any case compel any railway administration to accept lower mileage rates than the mileage rates which the administration may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route;

(*i*) [1] subject to the foregoing provisions of this sub-section, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly;

(*j*) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the Governor General in Council may by general or special order prescribe.

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[1] *Cf.* the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 48), s. 12.

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[1] 43. (*1*) Whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration. **Undue preference in case of unequal rates for like traffic or services.**

(*2*) In deciding whether a lower charge does or does not amount to an undue preference, the Commissioners may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made.

[2] 44. Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat or raft which does not belong to or is not hired or worked by the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft in so far as it is used for the purposes of the traffic of the railway. **Provision for facilities and equal treatment where ships or boats are used which are not part of a railway.**

45. A railway administration may charge reasonable terminals. **Terminals.**

[3] 46. (*1*) The Governor General in Council may, if he thinks fit, refer to the Commissioners for decision any question or dispute which may arise with respect to the terminals charged by a railway administration, and the Commissioners may thereupon decide what is a reasonable sum to be paid to the railway administration in respect of terminals. **Power of Railway Commission to fix terminals.**

[4] (*2*) In deciding the question or dispute the Commissioners shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.

CHAPTER VI.

Working of Railways.

General.

[5] 47. (*1*) Every railway company and, in the case of a railway administered **General rules.**

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[1] *Cf.* the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 27.
[2] *Cf.* the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 25.
[3] *Cf.* the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 48), s. 15.
[4] *Cf.* the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 24 (*1*).
[5] *Cf.* the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), ss. 7, 8 and 9; and the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 108.

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by the Government, an officer to be appointed by the Governor General in Council in this behalf, shall make general rules consistent with this Act for the following purposes, namely :—

(*a*) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled ;

(*b*) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage;

(*c*) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods ;

(*d*) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers;

(*e*) for regulating the conduct of the railway servants ;[1]

(*f*) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner ; and,

(*g*) [2] generally, for regulating the travelling upon, and the use, working and management of, the railway.[3]

(*2*) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees,[4] and that, in the case of a rule made under clause (*e*) of sub-section (*1*), the railway servant shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay.

(*3*) A rule made under this section shall not take effect until it has received the sanction of the Governor General in Council and been published in the Gazette of India :

Provided that, where the rule is in the terms of a rule which has already been published at length in the Gazette of India, a notification in that Gazette referring to the rule already published and announcing the adoption thereof shall be deemed a publication of a rule in the Gazette of India within the meaning of this sub-section.

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[1] For rules for the guidance of railway officials employed on lines administered by the Government, *see* Gazette of India, 1895, Pt. I, p. 173.

[2] For general rules made by the Director General of Railways for all open lines of railway in British India administered by the Government, *see* Gazette of India, 1892, Pt. I, p. 239.

[3] *Cf.* the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92) s. 32.

[4] *Cf.* the Canadian Railway Act, 1886 (49 Vict., c. 109), s. 86.

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(*4*) The Governor General in Council may cancel any rule made under this section, and the authority required by sub-section (*1*) to make rules thereunder may at any time, with the previous sanction of the Governor General in Council, rescind or vary any such rule.[1]

(*5*) Every rule purporting to have been made for any railway under section 8 of the Indian Railway Act, 1879,[2] and appearing from the Gazette of India to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made and to have taken effect under this section.

IV of 1879.

(*6*) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times.

Disposal of differences between railways regarding conduct of joint traffic.

[3] **48.** Where two or more railway administrations whose railways have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the Governor General in Council, upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

Agreements with the Governor General in Council for construction or lease of rolling-stock.

[4] **49.** Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41,[5] provides, may from time to time make and carry into effect agreements with the Governor General in Council for the construction of rolling-stock, plant or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling-stock, plant, machinery or equipments required for use on a railway, or for the maintenance of rolling-stock.

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[1] For amendments :—(*1*) in the general rules for all open lines of railway administered by the Governments, *see* Gazette of India, 1893, Pt. I, pp. 34, 36, 126, 359 and 528 ; (*2*) in the rules for the guidance of railway officials, *see* Gazette of India, 1896, Pt. I, pp. 422, 501, 516, 577 and 816 ; *ibid*, 1897, Pt. I, p. 167 ; and *ibid*, 1898, Pt. I, pp. 38 and 361.

[2] Act IV of 1879 is repealed by s. 2 of this Act.

[3] *Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 11, and the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 9.

[4] *Cf.* the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict., c. 41), s. 4 (*d*).

[5] The Indian Guaranteed Railways Act, 1879, printed, Collection of Statutes relating to India, Vol. II, p. 1154.

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Powers of railway companies to enter into working agreements.

[1] **50.** Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41,[2] provides, may from time to time make with the Governor General in Council, and carry into effect, or, with the sanction of the Governor General in Council, make with any other railway administration, and carry into effect, any agreement with respect to any of the following purposes, namely :—

(*a*) the working, use, management and maintenance of any railway ;

(*b*) the supply of rolling-stock and machinery necessary for any of the purposes mentioned in clause (*a*) and of officers and servants for the conduct of the traffic of the railway ;

(*c*) the payments to be made and the conditions to be performed with respect to such working, use, management and maintenance ;

(*d*) the interchange, accommodation and conveyance of traffic being on, coming from or intended for the respective railways of the contracting parties, and the fixing, collecting, apportionment and appropriation of the revenues arising from that traffic ;

(*e*) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on :

Provided that the agreement shall not affect any of the rates which the railway administrations parties thereto are, from time to time, respectively authorized to demand and receive from any person, and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into.

Establishment of ferries and roadways for accommodation of traffic.

[3] **51.** Any railway company, not being a company for which the Statute 42 and 43 Victoria,[2] chapter 41, provides, may from time to time exercise with the sanction of the Governor General in Council all or any of the following powers, namely :—

(*a*) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry ;

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[1] *Cf.* the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict., c. 41), s. 2 ; the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 87 ; the Railway (Sales and Leases) Act, 1845 (8 & 9 Vict., c. 96) ; and the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 22.

[2] The Indian Guaranteed Railways Act, 1879, printed, Collection of Statutes relating to India, Vol. II, p. 1154.

[3] *Cf.* the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict., c. 41), s. 4.

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(*b*) it may work for purposes other than the accommodation of the traffic of the railway any ferry established by it under this section;

(*c*) it may provide and maintain on any of its bridges roadways for foot-passengers, cattle, carriages, carts or other traffic;

(*d*) it may construct and maintain roads for the accommodation of traffic passing to or from its railway;

(*e*) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals or goods carried or to be carried on its railway;

(*f*) it may charge tolls on the traffic using such ferries, roadways, roads or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the Governor General in Council.

Returns.

[1] **52.** Every railway administration shall, in forms to be prescribed by the Governor General in Council, prepare, half-yearly or at such intervals as the Governor General in Council may prescribe, such returns of its capital and revenue transactions and of its traffic as the Governor General in Council may require, and shall forward a copy of such returns to the Governor General in Council at such times as he may direct.

Carriage of Property.

Maximum load for wagons.

[2] **53.** (*1*) Every railway administration shall determine the maximum load for every wagon or truck in its possession, and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck.

(*2*) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck.

(*3*) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the Governor General in Council for the class of axle under the wagon or truck.

Powers for railway administrations to impose conditions for working traffic.

54. (*1*) Subject to the control of the Governor General in Council, a railway administration may impose conditions, not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods.

[1] *Cf.* the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), s. 3; the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), ss. 3 and 4; and the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), ss. 9 and 10.

[2] *Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 16.

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(*2*) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (*1*) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(*3*) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

Lien for rates, terminals and other charges.

[1] **55.** (*1*) If a person fails to pay on demand made by or on behalf of a railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession.

(*2*) When any animals or goods have been detained under sub-section (*1*), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Governor General in Council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

(*3*) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto.

(*4*) If a person on whom a demand for any rate, terminal or other charge due from him has been made fails to remove from the railway within a reasonable time any animals or goods which have been detained under sub-section (*1*), or any animals or goods which have remained unsold after a sale under sub-section (*2*), the railway administration may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (*3*).

(*5*) Notwithstanding anything in the foregoing sub-sections, the railway administration may recover by suit any such rate, terminal or other charge as aforesaid or balance thereof.

Disposal of unclaimed things on a railway.

56. (*1*) When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled

[1] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 97.

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thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods.

(*2*) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.

Power for railway administrations to require indemnity on delivery of goods in certain cases.

57. Where any animals, goods or sale-proceeds in the possession of a railway administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods or sale-proceeds.

Requisitions for written accounts of description of goods.

58. (*1*) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed in this behalf by the railway administration, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof.

(*2*) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods in order that their description may be ascertained, the railway administration may, (*a*) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods or, (*b*) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate.

(*3*) If an account delivered under sub-section (*1*) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

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(*4*) [1] If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried or have been carried on a railway, respecting the description of goods of which an account has been delivered under this section, the railway servant may detain and examine the goods.

(*5*) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (*1*), the person who delivered the account, or, if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(*6*) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (*1*), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

Dangerous or offensive goods.

59. (*1*) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods upon a railway.

(*2*) No person shall take any such goods with him upon a railway without giving notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(*3*) Any railway servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in [2][sub-section (*2*)] having to his knowledge been given, may refuse to carry them or may stop their transit.

(*4*) If any railway servant has reason to believe any such goods to be contained in a package with respect to the contents whereof such notice as is mentioned in sub-section (*2*) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(*5*) Nothing in this section shall be construed to derogate from the Indian

[1] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 101.

[2] The words and figure "sub-section (*2*)" were substituted for the words and figure "sub-section (*1*)" by the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896), s. 3, printed, General Acts, Vol. VI.

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IV of 1884. Explosives Act, 1884,[1] or any rule under that Act, and nothing in sub-sections *(1)*, *(3)* and *(4)* shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government or to any goods which an officer, soldier, sailor or police-officer or a person enrolled as a volunteer under the Indian Volunteers Act, 1869,[2] may take with him upon a railway in the course of his employment or duty as such.

XX of 1869.

Exhibition to the public of authority for quoted rates.

[3] **60.** At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him at all reasonable times, and without payment of any fee, the rate-books or other documents in which the rate is authorized by the administration or administrations concerned.

Requisitions on railway administrations for details of gross charges.

[4] **61.** *(1)* Where any charge is made by and paid to a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom or on whose behalf the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely :—

(*a*) the carriage of the goods on the railway;

(*b*) terminals;

(*c*) demurrage; and

(*d*) [5] collection, delivery and other expenses;

but without particularizing the several items of which the charge under each head consists.

(2) The application under sub-section *(1)* must be in writing and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application.

Carriage of Passengers.

Communication between passengers and railway servants in charge of trains.

[6] **62.** The Governor General in Council may require any railway administration to provide and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the Governor General in Council has approved.

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[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 703.
[2] Printed, General Acts, Vol. II, Ed. 1898, p. 112.
[3] *Cf.* the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 48), s. 14, and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 33.
[4] *Cf.* the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 17.
[5] *Cf.* the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 48), s. 14.
[6] *Cf.* the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 22.

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Maximum number of passengers for each compartment.

63. Every railway administration shall fix, subject to the approval of the Governor General in Council, the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages, as the Governor General in Council, after consultation with the railway administration, may determine.

Reservation of compartments for females.

64. (*1*) On and after the first day of January, 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train.

(*2*) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

Exhibition of time-tables and tables of fares at stations.

65. Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway, in English and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, lists of and the fares chargeable for travelling from the station where the lists are posted to every place for which card-tickets are ordinarily issued to passengers at that station.

Supply of tickets on payment of fares.

66. (*1*) Every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket, specifying the class of carriage for which, and the place from and the place to which, the fare has been paid, and the amount of the fare.

(*2*) The matters required by sub-section (*1*) to be specified on a ticket shall be set forth—

(*a*) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and

(*b*) if the class of carriage to be so specified is any other than the lowest class, then in English.

Provision for case in which tickets have been issued for trains not having room available for additional passengers.

67. (*1*) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued.

(*2*) A person to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued shall on returning the ticket within three hours after the departure of the train be entitled to have his fare at once refunded.

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(*3*) A person for whom there is not room available in the class of carriage for which he has purchased a ticket and who is obliged to travel in a carriage of a lower class shall be entitled on delivering up his ticket to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled.

Prohibition against travelling without pass or ticket.

68. No person shall, without the permission of a railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket.

Exhibition and surrender of passes and tickets.

69. Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in his behalf, present his pass or ticket to the railway servant for examination, and at or near the end of the journey for which the pass or ticket was issued, or, in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant.

Return and season tickets.

70. A return ticket or season ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued.

Power to refuse to carry persons suffering from infectious or contagious disorder.

71. (*1*) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (*1*), clause (*d*), a person suffering from any infectious or contagious disorder.

(*2*) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway.

(*3*) A railway servant giving such permission as is mentioned in sub-section (*2*) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway.

CHAPTER VII.

Responsibility of Railway Administrations as Carriers.

Measure of the general responsibility of a railway administration as a carrier of animals and goods.

72. (*1*) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.[1]

IX of 1872.

[1] Printed, General Acts, Vol. II, Ed. 1898, p. 299.

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(*2*) An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void, unless it—

(*a*) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(*b*) is otherwise in a form approved by the Governor General in Council.[1]

(*3*) Nothing in the common law of England or in the Carriers Act, 1865,[2] regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration. III of 1865.

Further provision with respect to the liability of a railway administration as a carrier of animals.

[3]**73.** (*1*) The responsibility of a railway administration under the last foregoing section for the loss, destruction or deterioration of animals delivered to the administration to be carried on a railway shall not in any case exceed, in the case of elephants or horses, five hundred rupees a head or, in the case of [mules,][4] camels or horned cattle, fifty rupees a head or, in the case of [donkeys,][4] sheep, goats, dogs or other animals, ten rupees a head, unless the person sending or delivering them to the administration caused them to be declared, or declared them, at the time of their delivery for carriage by railway, to be respectively of higher value than five hundred, fifty or ten rupees a head, as the case may be.

(*2*) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid.

(*3*) In every proceeding against a railway administration for the recovery of compensation for the loss, destruction or deterioration of any animal, the burden of proving the value of the animal, and, where the animal has been injured, the extent of the injury, shall lie upon the person claiming the compensation.

Further provision with respect to the liability of a railway administration as a carrier of luggage.

74. A railway administration shall not be responsible for the loss, destruction or deterioration of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt therefor.

Further provision with

[5]**75.** (*1*) When any articles mentioned in the second schedule are contained

[1] For risk note forms prescribed under this clause, *see* Gazette of India, 1898, Pt. I, p. 282.
[2] Printed, General Acts, Vol. I, Ed. 1898, p. 450.
[3] *Cf.* the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 7.
[4] The words "mules" and "donkeys" were added by the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896), s. 4, printed, General Acts, Vol. VI.
[5] *Cf.* the Carriers Act, 1830 (11 Geo. IV & 1 Will. IV, c. 68), s. 1.

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in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

respect to the liability of a railway administration as a carrier of articles of special value.

(*2*) When any parcel or package of which the value has been declared under sub-section (*1*) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

(*3*) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

76. In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused.

Burden of proof in suits in respect of loss of animals or goods.

77. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

Notification of claims to refunds of overcharges and to compensation for losses.

78. Notwithstanding anything in the foregoing provisions of this Chapter, a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which an account materially false has been delivered under sub-section (*1*) of section 58 if the loss, destruction or deterioration is in any way brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

Exoneration from responsibility in case of goods falsely described.

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Settlement of compensation for injuries to officers, soldiers and followers on duty.

79. Where an officer, soldier or follower, while being or travelling as such on duty upon a railway belonging to, and worked by, the Government, loses his life or receives any personal injury in such circumstances that, if he were not an officer, soldier or follower being or travelling as such on duty upon the railway, compensation would be payable under Act No. XIII of 1855 [1] or to him, as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall, where there is any provision in this behalf in the military regulations to which he was immediately before his death, or is, subject, be determined in accordance with those regulations, and not otherwise.

Suits for compensation for injury to through-booked traffic.

80. Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred.

81. [*Limitation of liability of railway administration in respect of traffic on inland waters by vessel not being part of railway.*] *Rep. by the Indian Railways Act, 1896 (IX of 1896), section 5.*

Limitation of liability of railway administration in respect of accidents at sea.

[2] **82.** (*1*) When a railway administration contracts to carry passengers, animals or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea from the act of God, the King's enemies, fire, accidents from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers and navigation of whatever nature and kind soever shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss

[1] The Indian Fatal Accidents Act, 1855 (XIII of 1855), printed, General Acts, Vol. I, Ed. 1898, p. 98.

[2] *Cf.* the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 14, and the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 12.

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of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act, 1854,[1] and the Merchant Shipping Act Amendment Act, 1862,[1] if the ship were registered under the former of those Acts and the railway administration were owner of the ship, and not to any greater extent.

17 & 18 Vict., c. 104.
25 & 26 Vict., c. 63.

(*2*) The burden of proving that any such loss, injury or damage as is mentioned in sub-section (*1*) happened during the carriage by sea shall lie on the railway administration.

CHAPTER VIII.

ACCIDENTS.

Report of railway accidents.

[2] **83.** When any of the following accidents occurs in the course of working a railway, namely :—

(*a*) any accident attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code,[3] or with serious injury to property;

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(*b*) any collision between trains of which one is a train carrying passengers;

(*c*) the derailment of any train carrying passengers or of any part of such a train;

(*d*) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property;

(*e*) any accident of any other description which the Governor General in Council may notify in this behalf in the Gazette of India;

the railway administration working the railway and, if the accident happens to a train belonging to any other railway administration, the other railway administration also shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector appointed for the railway; and the station-master nearest to the place at which the accident occurred or, where there is no station-master, the railway servant in charge of the section of the railway on which the accident occurred shall, without unnecessary delay, give notice of the accident to the Magistrate of the district in which the accident occurred, and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magis-

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[1] *See* now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).
[2] *Cf.* the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 6.
[3] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

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trate and police-officer as the Governor General in Council appoints in this behalf.

Power to make rules regarding notices of, and enquiries into, accidents.

84. The Governor General in Council may make rules,[1] consistent with this Act and any other enactment for the time being in force for all or any of the following purposes, namely :—

(*a*) for prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those notices are to contain ;

(*b*) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred ;

(*c*) for prescribing the duties of railway servants, police-officers, Inspectors and Magistrates on the occurrence of an accident.

Submission of return of accidents.

85. Every railway administration shall send to the Governor General in Council a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals of time as the Governor General in Council directs.[2]

Provision for compulsory medical examination of person injured in railway accident.

[3]**86.** Whenever any person injured by an accident on a railway claims compensation on account of the injury, any Court or person having by law or consent of parties authority to determine the claim may order that the person injured be examined by some duly qualified medical practitioner named in the order and not being a witness on either side, and may make such order with respect to the costs of the examination as it or he thinks fit.

CHAPTER IX.

PENALTIES AND OFFENCES.

Forfeitures by Railway Companies.

Penalty for default in compliance with requisition under section 13.

87. If a railway company fails to comply with any requisition made under section 13, it shall forfeit to the Government the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues.

Penalty for contravention of section 16, 18, 19, 20, 21 or 24.

88. If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, sub-section (*2*), or opens or uses any railway or work in contravention of section 18, section

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[1] For rules under the section as to notices of accidents occurring in the course of working a railway, *see* Gazette of India, 1895, Pt. I, pp. 366 and 948.

[2] For rules as to returns of accidents to be submitted by railway administrations to Government, *see* Gazette of India, 1895, Pt. I, p. 366 ; and *ibid*, 1898, Pt. I, p. 737.

[3] *Cf.* the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 26.

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19, section 20 or section 21, or re-opens any railway or uses any rolling-stock in contravention of section 24, it shall forfeit to the Government the sum of two hundred rupees for every day during which the motive power, railway, work or rolling-stock is used in contravention of any of those sections.

Penalty for not having certain documents kept or exhibited at stations under section 47, 54 or 65.

89. If a railway company fails to comply with the provisions of section 47, sub-section (*6*), section 54, sub-section (*2*), or section 65, with respect to the books or other documents to be kept open to inspection or conspicuously posted at stations on its railway, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not making rules as required by section 47.

90. If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for failure to comply with decision under section 48.

[1] **91.** If a railway company refuses or neglects to comply with any decision of the Governor General in Council under section 48, it shall forfeit to the Government the sum of two hundred rupees for every day during which the refusal or neglect continues.

Penalty for delay in submitting returns under section 52 or 85.

92. If the railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock.

93. If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened.

Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway

[2] **94.** If a railway company fails to comply with any requisition of the Governor General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it, which carries passengers, of such efficient means of communication as the Governor General in Council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition.

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[1] *Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 11.
[2] *Cf.* the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 22.

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Penalty for failure to reserve compartments for females under section 64.

95. If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the Government the sum of twenty rupees for every train in respect of which the default occurs.

Penalty for omitting to give the notices of accidents required by section 83 and under section 84.

96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the Government the sum of one hundred rupees for every day during which the omission continues.

Recovery of penalties.

97. (*1*) When a railway company has through any act or omission forfeited any sum to the Government under the foregoing provisions of this Chapter, the sum shall be recoverable by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

(*2*) The suit must be instituted with the previous sanction of the Governor General in Council, and the plaintiff therein shall be the Secretary of State for India in Council.

(*3*) The Governor General in Council may remit the whole or any part of any sum forfeited by a railway company to the Government under the foregoing provisions of this Chapter.

Alternative or supplementary character of remedies afforded by the foregoing provisions of this Chapter.

98. Nothing in those provisions shall be construed to preclude the Government from resorting to any other mode of proceeding instead of, or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act.

Offences by Railway Servants.

Breach of duty imposed by section 60.

[1] 99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

Drunkenness.

100. If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both.

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[1] *Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 17.

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[1]**101.** If a railway servant, when on duty, endangers the safety of any person— **Endangering the safety of persons.**

(*a*) by disobeying any general rule made, sanctioned, published and notified under this Act, or

(*b*) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(*c*) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

102. If a railway servant compels or attempts to compel, or causes, any passenger to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees. **Compelling passengers to enter carriages already full.**

103. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees. **Omission to give notice of accident.**

[2]**104.** If a railway servant unnecessarily— **Obstructing level-crossings.**

(*a*) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

(*b*) keeps a level-crossing closed against the public,

he shall be punished with fine which may extend to twenty rupees.

[3]**105.** If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both. **False returns.**

Other Offences.

[4]**106.** If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the **Giving false account of goods.**

[1] *Cf.* the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), ss. 13 and 14, and the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 17.
[2] *Cf.* the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 5.
[3] *Cf.* the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 10.
[4] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 99.

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goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

Unlawfully bringing dangerous or offensive goods upon a railway.

[1]**107.** If in contravention of section 59 a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

Needlessly interfering with means of communication in a train.

[2]**108.** If a passenger, without reasonable and sufficient cause, makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

Entering compartment reserved or already full or resisting entry into a compartment not full.

109. (*1*) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63, refuses to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to twenty rupees.

(*2*) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

Smoking.

110. (*1*) If a person, without the consent of his fellow-passengers, if any, in the same compartment smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees.

(*2*) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (*1*), be removed by any railway servant from the carriage in which he is travelling.

Defacing public notices.

[3]**111.** If a person, without authority in this behalf, pulls down or wilfully injures any board or document set up or posted by order of a railway administration on a railway or any rolling-stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees.

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[1] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 152.
[2] *Cf.* the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 22.
[3] *Cf.* the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16), s. 146.

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[1]112. If a person, with intent to defraud a railway administration,— **Fraudulently travelling or attempting to travel without proper pass or ticket.**

(*a*) enters in contravention of section 68 any carriage on a railway, or

(*b*) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used,

he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

[2]113. (*1*) If a passenger travels in a train without having a proper pass or a proper ticket with him, or being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined or, in case of their having been examined more than once, were last examined. **Travelling without pass or ticket or with insufficient pass or ticket or beyond authorized distance.**

(*2*) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorized by his pass or ticket, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made.

(*3*) The excess charge referred to in sub-section (*1*) and sub-section (*2*) shall,—

(*a*) where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, be one rupee, two annas or eight annas, and

(*b*) in any other case, be six rupees, one rupee or three rupees,

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[1] *Cf.* English Bye-law No. 2.
[2] *Cf.* the French and German Railway Law.

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according as the passenger is travelling or has travelled or has attempted to travel in a carriage of the highest class or in a carriage of the lowest class or in a carriage of any other class or kind:

Provided that such excess charge shall in no case exceed,—

(*a*) where the liability to pay it arises under sub-section (*1*), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section, or

(*b*) where such liability arises under sub-section (*2*), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

(*4*) If a passenger liable to pay the excess charge and fare mentioned in sub-section (*1*), or the excess charge and any difference of fare mentioned in sub-section (*2*), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections, as the case may be, the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf, be recovered by the Magistrate from the passenger as if it were a fine [1] imposed on the passenger by the Magistrate and shall, as it is recovered, be paid to the railway administration.

Transferring any half of return ticket.

[2] **114.** If a person sells or attempts to sell, or parts or attempts to part with the possession of, [3][any half] of a return ticket in order to enable any other person to travel therewith, or purchases such half of a return ticket, he shall be punished with fine which may extend to fifty rupees, and, if the purchaser of such half of a return ticket travels or attempts to travel therewith, he shall be punished with an additional fine which may extend to the amount of the single fare for [4][the journey] authorised by the ticket.

Disposal of fines under the two last foregoing sections.

115. That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government.

Altering or defacing pass or ticket.

[5] **116.** If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees.

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[1] As to procedure for recovery of fines, *see* ss. 386 to 389 of the Code of Criminal Procedure, 1898 (Act V of 1898).

[2] *Cf.* English Bye-law No. 5.

[3] The words "any half" were substituted for the words "the return half" by s. 6 of the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896), printed, General Acts, Vol. VI.

[4] The words "the journey" were substituted for the words "the return journey" by s. 6 of the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896).

[5] *Cf.* English Bye-law No. 4.

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[1]117. (*1*) If a person suffering from an infectious or contagious disorder enters or travels upon a railway in contravention of section 71, sub-section (*2*), he, and any person having charge of him upon the railway when he so entered or travelled thereon, shall be punished with fine which may extend to twenty rupees, in addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased, and may be removed from the railway by any railway servant.

Being or suffering person to travel on railway with infectious or contagious disorder.

(*2*) If any such railway servant as is referred to in section 71, sub-section (*2*), knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees.

[2]118. (*1*) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or opens the side-door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

Entering carriage in motion, or otherwise improperly travelling on a railway.

(*2*) If a passenger, after being warned by a railway servant to desist, persists in travelling on the roof, steps or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by any railway sevant.

119. If a male person, knowing a carriage, compartment, room or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse, or, having entered it, remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Entering carriage or other place reserved for females.

120. If a person in any railway carriage or upon any part of a railway—

Drunkenness or nuisance on a railway.

(*a*) is in a state of intoxication, or

(*b*) commits any nuisance or act of indecency, or uses obscene or abusive language, or

(*c*) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp,

[1] *Cf.* English Bye-law No. 16.
[2] *Cf.* English Bye-law No. 11.

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he shall be punished with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Obstructing railway servant in his duty.

[1] **121.** If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

Trespass and refusal to desist from trespass.

[2] **122.** (*1*) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees.

(*2*) If a person so entering refuses to leave the railway on being requested to do so by any railway servant, or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person.

Disobedience of omnibus drivers to directions of railway servants.

123. If a driver or conductor of a tramcar, omnibus, carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

Opening or not properly shutting gates.

[3] **124.** In either of the following cases, namely :—

(*a*) if a person knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes or attempts to drive or take, any animal, vehicle or other thing across the railway,

(*b*) if, in the absence of a gate-keeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle or other thing under his charge have passed through the gate,

the person shall be punished with fine which may extend to fifty rupees.

Cattle-trespass.

125. (*1*) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recorded or may be recoverable under the Cattle-trespass Act, 1871.[4] I of 1871.

(*2*) If any cattle are wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway or for any other lawful purpose, the person in charge of the cattle or, at the

[1] *Cf.* the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), s. 16.
[2] *Cf.* the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), s. 16.
[3] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 75.
[4] Printed, General Acts, Vol. II, Ed. 1898, p. 183.

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option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.[1]

I of 1871.

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle-trespass Act, 1871.[1]

(4) The expression "public road" in sections 11 and 26 of the Cattle-trespass Act, 1871,[1] shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

(5) The word "cattle" has the same meaning in this section as in the Cattle-trespass Act, 1871.[1]

I of 1871.

Maliciously wrecking or attempting to wreck a train.

[2] **126.** If a person unlawfully—

(a) puts or throws upon or across any railway any wood, stone or other matter or thing, or

(b) takes up, removes, loosens or displaces any rail, sleeper or other matter or thing belonging to any railway, or

(c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway, or

(d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or

(e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Maliciously hurting or attempting to hurt persons travelling by railway.

[3] **127.** If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

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[1] Printed, General Acts, Vol. II, Ed. 1898, p. 183.

[2] *Cf.* the Malicious Damage Act, 1861 (24 & 25 Vict., c. 97), s. 35, and the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), s. 32.

[3] *Cf.* Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), s. 33.

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Endangering safety of persons travelling by railway by wilful act or omission.

[1]128. If a person, by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling-stock upon any railway, he shall be punished with imprisonment for a term which may extend to two years.

Endangering safety of persons travelling by railway by rash or negligent act or omission.

129. If a person rashly or negligently does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.

130. (*1*) If a minor under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code [2] to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts or omissions. XLV of 1860

(*2*) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.[3]

(*3*) If a father or guardian fails to execute a bond under sub-section (*1*) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees.

Procedure.

Arrest for offences against certain sections.

131. (*1*) If a person commits any offence mentioned in section 100, 101, 119, 120, 121, 126, 127, 128 or 129 or in section 130, sub-section (*1*), he may be arrested without warrant or other written authority by any servant or police-officer, or by any other person whom such servant or officer may call to his aid.

(*2*) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or commit him for trial.

Arrest of persons likely to abscond or unknown.

[4]132. (*1*) If a person commits any offence under this Act other than an offence mentioned in the last foregoing section, or fails or refuses to pay

[1] *Cf.* the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), s. 34, and the Mi ous Damage Act, 1861 (24 & 25 Vict., c. 97), s. 36.
[2] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[3] *See* ss. 386 to 389 of the Code of Criminal Procedure, 1898 (Act V of 1898).
[4] *Cf.* the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16), s. 156.

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any excess charge or other sum demanded under section 113, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway servant or police-officer, or any other person whom such railway servant or police-officer may call to his aid, may, without warrant or other written authority, arrest him.

(*2*) The person arrested shall be released on his giving bail, or, if his true name and address are ascertained, on his executing a bond without sureties, for his appearance before a Magistrate when required.

(*3*) If the person cannot give bail and his true name and address are not ascertained, he shall with the least possible delay be taken before the nearest Magistrate having jurisdiction.

X of 1882. (*4*) The provisions of Chapters XXXI and XLII of the Code of Criminal Procedure, 1882,[1] shall, so far as may be, apply to bail given and bonds executed under this section.

133. No Magistrate other than a Presidency Magistrate or than a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act. **Magistrates having jurisdiction under Act.**

134. (*1*) Any person committing any offence against this Act or any rule thereunder shall be triable for such offence in any place in which he may be or which the Local Government may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force. **Place of trial.**

(*2*) Every notification under sub-section (*1*) shall be published in the local official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway stations as the Local Government may direct.

CHAPTER X.

Supplemental Provisions.

135. Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely :— **Taxation of railways by local authorities.**

(*1*) A railway administration shall not be liable to pay any tax in aid of

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[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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the funds of any local authority [1] unless the Governor General in Council has, by notification in the official Gazette, declared the railway administration to be liable to pay the tax.[2]

(*2*) While a notification of the Governor General in Council under clause (*1*) of this section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(*3*) The Governor General in Council may at any time revoke or vary a notification under clause (*1*) of this section.

(*4*) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(*5*) "Local authority" in this section means a local authority as defined in the General Clauses Act, 1887,[3] and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river. I of 1887.

Restriction on execution against railway property.

[4]**136.** (*1*) None of the rolling-stock, machinery, plant, tools, fittings, material or effects used or provided by a railway administration for the purpose of the traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any Court [5][or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution], without the previous sanction of the Governor General in Council.

(*2*) Nothing in sub-section (*1*) is to be construed as affecting the

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[1] For definition of "local authority," *see* sub-s. (*5*) *infra* and the General Clauses Act, 1897 (X of 1897), s. 3 (*28*), printed, General Acts, Vol. VI.

[2] (*1*) For notification under this section declaring every Railway Administration to be liable to pay every tax which it is lawfully required to pay by or on behalf of any local authority in aid of the funds of such authority, *see* Gazette of India, 1890 Pt. I, p. 438.

(*2*) For continuation notification declaring such Administrations liable to pay certain taxes in aid of the funds of every local authority in respect of certain matters, *see* Gazette of India, 1893, Pt. I, p. 190.

(*3*) For notification imposing water-rates on the East Indian Railway in respect of certain Municipalities, *see* Gazette of India, 1893 and 1894, Pt. I, pp. 358 and 438, respectively.

[3] *See* now the General Clauses Act, 1897 (X of 1897), s. 3 (*28*), printed, General Acts, Vol. VI.

[4] *Cf.* the Railway Companies Act, 1867 (30 & 31 Vict., c. 127), s. 4.

[5] These words were added by the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896), s. 7, printed, General Acts, Vol. VI.

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authority of any Court to attach the earnings of a railway in execution of a decree or order.

137. (*1*) Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.[1] XLV of 1860.

Railway servants to be public servants for the purposes of Chapter IX of the Indian Penal Code.

(*2*) In the definition of "legal remuneration" in section 161 of that Code the word "Government" shall, for the purposes of sub-section (*1*), be deemed to include any employer of a railway servant as such.

(*3*) A railway servant shall not—

(*a*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 55 or section 56, or,

(*b*) in contravention of any direction of the railway administration in this behalf, engage in trade.

(*4*) Notwithstanding anything in section 21 of the Indian Penal Code[1] a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in sub-section (*1*). XLV of 1860.

Procedure for summary delivery to railway administration of property detained by a railway servant.

[2]**138.** If a railway servant is discharged or suspended from his office, or dies, absconds or absents himself, and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf, any station, dwelling-house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the railway administration and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police-officer, with proper assistance, to enter upon the building and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf.

Mode of signifying communications from the Governor General in Council.

[3]**139.** Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction to be given or signified on the part of the Governor General in Council, for any of the purposes of, or in relation to, this Act, or any of the powers or provisions therein contained, shall be sufficient and binding if in writing signed by a Secretary, Deputy

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[2] *Cf.* the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 106.
[3] *Cf.* the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 53.

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Secretary, Under-Secretary or Assistant Secretary to the Government of India, or by any other officer or servant authorised to act on behalf of the Governer General in Council in respect of the matters to which the same may relate, and the Governor General in Council shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

Service of notices on railway administrations.

140. Any notice or other document required or authorised by this Act to be served on a railway administration may be served, in the case of a railway administered by the Government or a Native State, on the Manager and, in the case of a railway administered by a railway company, on the Agent in India of the railway company—

(*a*) by delivering the notice or other document to the Manager or Agent, or

(*b*) by leaving it at his office, or

(*c*) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered under Part III of the Indian Post Office Act, 1866.[1] XIV of 1866

Service of notices by railway administrations.

[2] **141.** Any notice or other document required or authorised by this Act to be served on any person by a railway administration may be served—

(*a*) by delivering it to the person, or

(*b*) by leaving it at the usual or last known place of abode of the person, or

(*c*) by forwarding it by post in a prepaid letter addressed to the person at his usual or last known place of abode and registered under Part III of the Indian Post Office Act, 1866.[1] XIV of 1866

Presumption where notice is served by post.

142. Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Provisions with respect to rules.

143. (*1*) A rule under section 22, section 34 or section 84, or the cancellation, rescission or variation of a rule under any of those sections or under section 47, sub-section (*4*), shall not take effect until it has been published in the Gazette of India.

(*2*) Where any rule made under this Act, or the cancellation, rescission or variation of any such rule, is required by this Act to be published in the

[1] *See* now the Indian Post Office Act, 1898 (VI of 1898).
[2] *Cf.* the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16), s. 136; and the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 34.

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Gazette of India, it shall, besides being so published, be further notified to persons affected thereby in such manner as the Governor General in Council, by general or special order, directs.

(*3*) The Governor General in Council may cancel or vary any rule made by him under this Act.

Delegation of powers of Governor General in Council.

144. (*1*) The Governor General in Council may, by notification in the Gazette of India, invest, absolutely or subject to conditions, any Local Government with any of the powers or functions of the Governor General in Council under this Act with respect to any railway, and may, by that or a like notification, declare what Local Government shall, for the purposes of the exercise of powers or functions so conferred, be deemed to be the Local Government in respect of the railway.[1]

(*2*) The provisions of section 139 with respect to proceedings of the Governor General in Council shall, so far as they can be made applicable, apply to proceedings of a Local Government exercising the powers or discharging the functions of the Governor General in Council in pursuance of a notification under sub-section (*1*).

Representation of Managers and agents of Railways in Courts.

145. (*1*) The Manager of a railway administered by the Government or a Native State, and the Agent in India of a railway administered by a railway company, may, by instrument in writing, authorise any railway servant or other person to act for or represent him in any proceeding before any Civil, Criminal or other Court.

(*2*) A person authorised by a Manager or Agent to conduct prosecutions on behalf of a railway administration shall, notwithstanding anything in section 495 of the Code of Criminal Procedure, 1882,[2] be entitled to conduct such prosecutions without the permission of the Magistrate.

X of 1882.

Power to extend Act to steam-tramways.

146. The Governor General in Council may, by notification in the Gazette of India, extend this Act or any portion thereof to any tramway worked by steam or other mechanical power.[3]

Power to exempt railways from Act.

147. The Governor General in Council may, by a like notification, exempt any railway from any of the provisions of this Act.[4]

Matters supplemental to the definitions of "railways" and "railway servant".

148. (*1*) For the purposes of section 3, clauses (*5*), (*6*) and (*7*), and sections 4 to 19 (both inclusive), 47 to 52 (both inclusive), 59, 79, 83 to 92 (both inclusive), 96, 97, 98, 100, 101, 103, 104, 107, 111, 122, 124 to 132

[1] For notification delegating certain powers and functions vested in the Governor General in Council to Local Governments, *see* Gazette of India, 1890, Pt. I, p. 438.

[2] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

[3] For notifications extending the Act to certain steam-tramways, *see* Gazette of India, 1898, Pt. I, pp. 408 and 481.

[4] For notification exempting the Barsi Light Railway Company from the provision of s. 85 of this Act, *see* Gazette of India, 1896, Pt. I, p. 303.

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(both inclusive), 134 to 138 (both inclusive), 140, 141, 144, 145 and 147, the word "railway", whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion of a railway not used for the public carriage of passengers, animals or goods as well as to a railway falling within the definition of that word in section 3, clause (*4*).

(*2*) For the purposes of sections 5, 21, 83, 100, 101, 103, 104, 121, 122, 125 and 137, sub-sections (*1*), (*2*) and (*4*), and section 138, the expression "railway servant" includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

Amendment of the Indian Penal Code.

149. In sections 194 and 195 of the Indian Penal Code,[1] for the words "by this Code or the law of England" the words "by the law of British India or England" shall be substituted. XLV of 1860.

Amendment of the Sindh-Pishin Railway Act, 1887.

150. For that portion of the preamble to the Sindh-Pishin Railway Act, 1887,[2] which begins with the words "so far as it applies" and ends with the words "in its entirety," the words "should apply in its entirety to that part of the Sindh-Pishin section of the North-Western Railway which lies beyond the Province of Sindh" shall be substituted. XI of 1887.

THE FIRST SCHEDULE.

[ENACTMENTS REPEALED.]

(*See section 2.*)

Number and year.	Title.	Extent of repeal.
	Acts of the Governor General in Council.	
[3] III of 1865 .	Carriers Act, 1865	Section 7 (so far as it relates to railways) and section 10.
IV of 1879 .	ndian Railway Act, 1879	The whole.
IV of 1883 .	Indian Railway Act, 1883	The whole.
[4] XI of 1886 .	Indian Tramways Act, 1886	Section 49.
[5] * * *	* * * * * *	* * *

[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.
[2] Printed, Baluchistan Code, Ed. 1890, p. 49.
[3] Printed, General Acts, Vol. I, Ed. 1898, p. 450.
[4] Printed, *supra*, p. 73.
[5] The portion omitted, relates to the Upper Burma Laws Act, 1886 (XX of 1886), now repealed by the Burma Laws Act, 1898 (XIII of 1898), *see* the Fifth Schedule to the Act.

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THE FIRST SCHEDULE—*concluded.*

Number and year.	Title.	Extent of repeal.
	Act of the Lieutenant-Governor of Bengal in Council.	
I of 1882 .	Bengal Embankment Act, 1882 . . .	Section 16, and in section 17 the proviso to the first paragraph of that section, the words "or under the section last proceeding" and the words "or railroad" wherever they occur.

THE SECOND SCHEDULE.

ARTICLES TO BE DECLARED AND INSURED.

(*See section 75.*)

(*a*) gold and silver, coined or uncoined, manufactured or unmanufactured;

(*b*) plated articles;

(*c*) cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police-officer or person enrolled as a volunteer under the Indian Volunteers Act, 1869,[2] or of any public officer, British or foreign, entitled to wear uniform;

XX of 1869.

(*d*) pearls, precious stones, jewellery and trinkets;

(*e*) watches, clocks and timepieces of any description;

(*f*) Government securities;

(*g*) Government stamps;

(*h*) bills of exchange, hundis, promissory-notes, bank-notes and orders or other securities for payment of money;

(*i*) maps, writings and title-deeds;

(*j*) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art;

(*k*) art pottery and all articles made of glass, China or marble;

(*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;

[1] Printed, Bengal Code, Vol. II, Ed. 1890, p. 609.
[2] Printed, General Acts, Vol. II, Ed. 1898, p. 112.

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THE SECOND SCHEDULE—*concluded.*

(*m*) shawls;

(*n*) lace and furs;

(*o*) opium;

(*p*) ivory, ebony, coral and sandalwood;

(*q*) musk, sandalwood-oil and other essential oils used in the preparation of *itr* or other perfume;

(*r*) musical and scientific instruments;

(*s*) any article of special value which the Governor General in Council may, by notification in the Gazette of India, add to this schedule.[1]

ACT No. X OF 1890.[2]

[*21st March, 1890.*]

An Act to amend Act XXV of 1867.

WHEREAS it is expedient to amend Act XXV of 1867 (*an Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books*)[3]; It is hereby enacted as follows:—

1. [*Repeal of part of preamble to Act XXV of 1867.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

2. [*Repeal of part of section 1, Act XXV, 1867.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Amendment of section 6, Act XXV, 1867.

3. In section 6 of the said Act, for the words "other Court within the local limits of whose ordinary original civil jurisdiction" the words "other principal Civil Court of original jurisdiction for the place where" shall be substituted.

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[1] For articles added to this schedule by notification, *see* Gazette of India, 1894 and 1896, Pt. I, pp. 370 and 914, respectively.

[2] Short title, "The Press and Registration of Books Act (1867) Amendment Act, 1890," *see* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VII.

For Statement of Objects and Reasons, *see* Gazette of India, 1889, Pt. V, p. 236; for Report of the Select Committee, *see ibid*, 1890, Pt. V, p. 91; and for Proceedings in Council, *see ibid*, 1889, Pt. VI, p. 197; and *ibid*, 1890, Pt. VI, pp. 1 and 58.

This Act has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597, *see* Calcutta Gazette, 1892, Pt. I, p. 448.

This Act is in force in Upper Burma (except the Shan States) as being part of the original Act, XXV of 1867, declared in force there by the Burma Laws Act, 1898 (XIII of 1898).

It had been previously extended there under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, *see* Gazette of India, 1892, Pt. I, p. 94.

[3] Printed, General Acts, Vol. I, Ed. 1898, p. 634.

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4. For Part III (sections 9, 10 and 11) of the said Act the following shall be substituted, namely:— **Substitution of new Part for Part III, Act XXV, 1867.**

"PART III.

"DELIVERY OF BOOKS.

"9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government, as follows, that is to say:— **Copies of books printed after commencement of Act to be delivered gratis to Government.**

(*a*) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,

(*b*) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct,

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

"The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

"Nothing in the former part of this section shall apply to—

(*i*) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(*ii*) any periodical work published in conformity with the rules laid down in section 5 of this Act.

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Receipt for copies delivered under last foregoing section.

"10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Disposal of copies delivered under section 9.

"11. The copy delivered pursuant to clause (*a*) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine.

"Any copy or copies delivered pursuant to clause (*b*) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State, as the case may be."

Substitution of new sections for sections 16 and 17, Act XXV, 1867.

5. For sections 16 and 17 of the said Act the following shall be substituted, namely :—

Penalty for not delivering books or not supplying printer with maps.

"16. If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

"If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

Recovery of forfeitures and disposal thereof and of fine.

"17. Any sum forfeited to the Government under the last foregoing section may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of

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V of 1898. XLV of 1860. Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code,[1] for the levy of a fine.

"All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct."

Amendment of section 18, Act XXV, 1867.

6. In section 18 of the said Act, there shall be substituted for the words and figure "pursuant to section 9" the words, letter and figure "pursuant to clause (*a*) of the first paragraph of section 9", and for the words "copies thereof in manner aforesaid" the words, letter and figure "copy thereof pursuant to clause (*a*) of the first paragraph of section 9".

7. [*Repeal of section 22, Act XXV, 1867.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

ACT No. XI OF 1890.[2]

[*21st March, 1890.*]

An Act for the Prevention of Cruelty to Animals.

WHEREAS it is expedient to make further provision for the prevention of cruelty to animals; It is hereby enacted as follows:—

Title, extent and commencement, and supersession of other enactments.

1. (*1*) This Act may be called the Prevention of Cruelty to Animals Act, 1890.

(*2*) This section extends to the whole of British India: and the Local Government may, by notification in the official Gazette, extend, on and from a date to be specified in the notification, the whole or any part of the rest of this Act to any such local area as it thinks fit.[3]

(*3*) When any part of this Act has been extended under sub-section (*2*)

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[1] Printed, General Acts, Vol. I, Ed. 1898, p. 240.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1890, Pt. V, p. 4; for Report of the Select Committee, *see ibid*, p. 95; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 4, 10 and 62.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898). [It had previously been extended there under Act XIV of 1874, *see* Gazette of India, 1898, Pt. I, p. 94.]

The Act has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to British Baluchistan, *see* Gazette of India, 1892, Pt. II, p. 367.

It has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597, *see* Calcutta Gazette, 1892, Pt. I, p. 448.

[3] As to extension of the rest of the Act to places in—

(*1*) Assam, *see* Assam Gazette, 1897, Pt. II, pp. 169 and 170;
(*2*) Ajmere-Merwara, *see* Gazette of India, 1897, Pt. II, p. 771;
(*3*) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. 544 and 545;
(*4*) Burma, *see* Burma Laws List, Ed. 1897, p. 308;
(*5*) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 58;
(*6*) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 149 and 150, and North-Western Provinces and Oudh Gazette, 1897, Pt. I, p. 1194.

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to a local area, the Local Government may, by notification in the official Gazette, direct that the whole or any part of any other enactment in force in the local area for the prevention of cruelty to animals shall, except as regards anything done or any offence committed or any fine or penalty incurred or any proceedings commenced, cease to have effect in the local area, and such whole or part shall cease to have effect accordingly until the Local Government, by a like notification, otherwise directs.

(*4*) The Local Government may cancel or vary a notification under sub-section (*2*) or sub-section (*3*).

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "animal" means any domestic or captured animal : and

(*2*) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, to which the public have access.

Penalty for cruelty to animals in public places and for sale in such places of animals killed with unnecessary cruelty.

3. If any person in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or in any such other place,—

(*a*) [1] cruelly and unnecessarily beats, overdrives, overloads or otherwise ill-treats any animal, or

(*b*) [2] binds or carries any animal in such a manner or position as to subject the animal to unnecessary pain or suffering, or

(*c*) offers, exposes or has in his possession for sale any live animal which is suffering pain by reason of mutilation, starvation or other ill-treatment, or any dead animal which he has reason to believe to have been killed in an unnecessarily cruel manner,

[3] he shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Penalty for practising phuká.

4. If any person performs upon any cow the operation called phuká, he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

Penalty for killing animals with unnecessary cruelty anywhere.

5. If any person kills any animal in an unnecessarily cruel manner, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty for employing anywhere animals unfit for labour.

6. (*1*) If any person employs in any work or labour any animal which by reason of any disease, infirmity, wound, sore or other cause is unfit to be so

[1] *Cf.* Canadian 43 Vict., c. 38, s. 2.
[2] *Cf. ibid* and the Cruelty to Animals Act, 1849 (12 & 13 Vict., c. 92), s. 12.
[3] *Cf.* the Cruelty to Animals Act, 1849 (12 & 13 Vict., c. 92), s. 18.

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employed, or permits any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.

(*2*) The Local Government may, by general or special order, appoint places to be infirmaries for the treatment and care of animals in respect of which offences against sub-section (*1*) have been committed.

(*3*) The Magistrate before whom a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is alleged or proved to have been committed shall be sent for treatment and care to an infirmary and be there detained until it is in his opinion, or in the opinion of some other Magistrate, again fit for the work or labour on which it has been ordinarily employed.

(*4*) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal according to such scale of rates as the District Magistrate or, in the case of an infirmary in a Presidency-town, the Commissioner of Police may from time to time prescribe.

(*5*) If the owner refuses or neglects to pay such cost and to remove the animal within such time as a Magistrate may prescribe, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(*6*) The surplus, if any, of the proceeds of the sale shall, on application made by the owner within two months after the date of the sale, be paid to him, but the owner shall not be liable to make any payment in excess of the proceeds of the sale.

Penalty for permitting diseased animals to go at large or to die in public places.

7. If any person wilfully permits any animal of which he is the owner to go at large in any street while the animal is affected with contagious or infectious disease, or without reasonable excuse permits any diseased or disabled animal of which he is the owner to die in any street, he shall be punished with fine which may extend to one hundred rupees.

Search-warrants.

8. (*1*) If a Magistrate of the first class, Sub-divisional Magistrate, Commissioner of Police or District Superintendent of Police, upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence against section 4, section 5 or section 6 is being or is about to be or has been committed in any place, he may either himself enter and search or by his warrant authorise any police-officer above the rank of a constable to enter and search the place.

X of 1882. (*2*) The provisions of the Code of Criminal Procedure, 1882,[1] relating to

[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898).

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searches under that Code shall, so far as those provisions can be made applicable, apply to a search under sub-section (*1*).

Limitation for prosecutions.

9. A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence.

Destruction of suffering animals.

10. When any Magistrate, Commissioner of Police or District Superintendent of Police has reason to believe that an offence against this Act has been committed in respect of any animal, he may direct the immediate destruction of the animal if in his opinion its sufferings are such as to render such a direction proper.

Saving with respect to religious rites and usages.

11. Nothing in this Act shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class.

Provision supplementary to section 1 with respect to extent of Act.

12. Notwithstanding anything in section 1, sections 9, 10 and 11 shall extend to every local area in which any section of this Act constituting an offence is for the time being in force.

ACT No. XIII OF 1890.[1]

[*28th March, 1890.*]

An Act to amend the Excise Act, 1881,[2] and the Bengal Excise Act, 1878,[3] and to apply to Malt Liquor certain provisions of the Sea Customs Act, 1878,[4] respecting Spirit.

WHEREAS it is expedient to amend the Excise Act, 1881,[2] and the Bengal Excise Act, 1878,[3] and to apply to malt liquor certain provisions of the Sea Customs Act, 1878,[4] respecting spirit; It is hereby enacted as follows:— XXII of 1881. Ben. VII of 1878. VIII of 1878.

Title and commencement.

1. (*1*) This Act may be called the Excise (Malt Liquors) Act, 1890; and

(*2*) It shall come into force at once.

2—5. [*Amendment of the Excise Act, 1881 (XXII of 1881).*] *Rep. by the Excise Act, 1896 (XII of 1896).*

6—7. [*Amendment of the Bengal Excise Act, 1878.*][3] *Not reproduced as they affect the Bengal Code.*

8. [*Saving of legislative authority of Bengal Council.*] *Not reproduced as it affects the Bengal Code.*

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1890, Pt. V, p. 72; for Debates in Council, *see ibid*, Pt. VI, pp. 31, 68 and 75. The Act has been declared in force in the Angul District by the Angul District Regulation, 1894 (I of 1894). S. 9 of the Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898).

[2] So much of this Act as amends the Excise Act, 1881 (XXII of 1881), has been repealed by the Excise Act, 1896 (XII of 1896).

[3] Printed, Bengal Code, Vol. II, Ed. 1890, p. 366.

[4] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

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Drawback of Excise-duty on Export of Malt Liquor.

VIII of 1878.

9. The provisions of section 150 of the Sea Customs Act, 1878,[1] with respect to the allowance of a drawback of excise-duty paid on spirit manufactured in British India and exported to a foreign port, and with respect to the regulation of the drawback by the quantity of such spirit, shall apply also, so far as they can be made applicable, to fermented liquor made in British India from malt and so exported and to the drawback of the excise-duty paid on such liquor.

Application of provisions of section 150, Act VIII, 1878, to malt liquor.

ACT No. XIV OF 1890.[2]

[*31st July, 1890.*]

An Act to amend the Schedule to the Petroleum Act, 1886.[3]

XII of 1886.

WHEREAS it is expedient to amend parts of the fourth paragraph (*Application of the test*) of Part III of the schedule to the Petroleum Act, 1886;[3] It is hereby enacted as follows:—

1. For the third and fourth clauses of the said paragraph commencing respectively with the words "if the flash takes place at any temperature below 77° Fahrenheit" and "No flash which takes place within eight degrees of the temperature at which the testing is commenced," the following shall be substituted, namely:—

Amendment of schedule to Act XII of 1886.

[*Printed, supra, pp. 109 and 110.*]

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[1] Printed, General Acts, Vol. III, Ed. 1898, p. 168.

[2] Short title, "The Petroleum Act (1886) Amendment Act, 1890." *See* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1890, Pt. V, p. 111; for Proceedings in Council, *see ibid*, Pt. VI, pp. 115 and 121.

This Act, as being part of the Petroleum Act, 1886 (XII of 1886), has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to British Baluchistan, *see* Gazette of India, 1895, Pt. II, p. 314; as being a part of that Act, it has been declared in force in Upper Burma (except the Shan States), *see* the Burma Laws Act, 1898 (XIII of 1898). It had previously been extended there as a separate Act by notification under Act XIV of 1874, *see* Gazette of India, 1894, Pt. I, p. 263.

[3] Printed, *supra*, p. 96.

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ACT No. XVI OF 1890.[1]

[*11th September, 1890.*]

An Act to amend the Births, Deaths and Marriages Registration Act, 1886.[2]

WHEREAS it is expedient to amend the Births, Deaths and Marriages Registration Act, 1886[2]; It is hereby enacted as follows:— VI of 1886.

Amendment of section 32, Act VI, 1886.

1. In section 32 of the said Act, for the words "within one year from the date on which this Act comes into force," the words "at any time before the first day of April, 1891," shall be substituted.

Addition new section 35A, Act VI, 1886.

2. The following section shall be added to Chapter V of the said Act, namely:—

"35A. [*Printed, supra, p. 64.*]

ACT No. XVIII OF 1890.[3]

[*16th October, 1890.*]

An Act to amend the Indian Emigration Act, 1883.[4]

WHEREAS it is expedient to amend the Indian Emigration Act, 1883,[4] in manner hereinafter appearing; It is hereby enacted as follows:— XXI of 1883.

Correction of section 31, Act XXI, 1883.

1. In section 31 of the said Act, after the word "mistake" the word "and" shall be inserted.

Amendment of, and addi-

2. (*1*) In section 35, sub-section (*1*), of the said Act, the words "in

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[1] Short title, "The Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890." *See* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1890, Pt. V, p. 127; for Proceedings in Council, *see ibid*, Pt. VI, pp. 126 and 129.

As being a part of the original Act VI of 1886, it is in force in Upper Burma (except the Shan States), *see* Burma Laws Act, 1898 (XIII of 1898).

This Act has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, p. 597, *see* Calcutta Gazette, 1891, Pt. I, p. 123.

[2] Printed, *supra*, p. 53.

[3] Short title, "The Indian Emigration Act (1883) Amendment Act, 1890." *See* the Indian Short Titles Act, 1897 (XIV of 1897).

For Statement of Objects and Reasons, *see* Gazette of India, 1890, Pt. V, p. 124; for Report of the Select Committee, *see ibid*, p. 133, and for Proceedings in Council, *see ibid*, Pt. VI, pp. 122, 126, 131 and 136.

This Act has been declared in force in the Santhál Parganas by notification under s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Ed. 1889, p. 597, *see* Calcutta Gazette, 1892, Pt. I, p. 448.

[4] Printed, General Acts, Vol. IV, Ed. 1898, p. 668.

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duplicate" shall be substituted for the words "in triplicate" in both places where the latter words occur.

tion to, section 35, Act XXI, 1883.

(2) To the same section the following sub-section shall be added, namely:—

"(4) Any number of intending emigrants appearing with the same recruiter before the Registering Officer or Protector at the same time, and desiring to emigrate on the same terms to the same country, may, with the permission of the Registering Officer or Protector (as the case may be), execute one instrument of agreement under this section, instead of each of such intending emigrants executing a separate instrument."

3. For section 37 of the said Act the following shall be substituted, namely:—

Substitution of new section for section 37, Act XXI, 1883.

"37. When the agreement has been executed and attested—

Record of registrations and agreements.

(a) one of the copies thereof shall be delivered to the emigrant, and the other shall be retained by the Protector or sent by the Registering Officer to him, and

(b) a certified copy of the particulars registered under section 31 concerning the emigrant or emigrants by whom the agreement was executed, and concerning his or their dependents (if any), shall be delivered to the recruiter for transmission to the Emigration Agent."

4. There shall be substituted in sub-section (1) of section 49 of the said Act, for the word "agreement" the words and figures "particulars registered under section 31," and in sub-section (2) of the same section for the word "agreement" the words "said copy".

Amendment of section 49, Act XXI, 1883.

5. To sub-section (1) of section 56 of the said Act the following proviso shall be added, namely:—

Addition of proviso to section 56 (1), Act XXI, 1883.

"Provided that, if the vessel is a steam-ship having a certificate of survey granted by the Board of Trade or any British Colonial Government or under the Indian Steam-ships Act, 1884,[1] and in force and applicable to her intended voyage, the survey under this sub-section with a view to ascertain her seaworthiness shall not extend to her hull or machinery unless the Protector of Emigrants has reason to believe that, since the grant of the certificate, her hull or machinery has sustained injury or damage or has otherwise become inefficient."

VII of 1884.

[1] Printed, General Acts, Vol. IV, Ed. 1898, p. 740.

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6. [*Repeal of section 70, Act XXI, 1883.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Substitution of new section for section 102, Act XXI, 1883.

7. For section 102 of the said Act as amended by Act XXI of 1884[1] the following shall be substituted, namely:—

Provision supplementary to section 6 (*1*) of this Act.

"102. (*1*) On and from such a date as the Governor General in Council may, by notification in the Gazette of India, fix in this behalf with respect to any protected Native State adjoining the Straits Settlements, or with respect to any British colony or possession for labour in which Natives of India are recruited exclusively through the agency of the Government of the Straits Settlements, a Native of India who departs by sea out of British India under an agreement to labour for hire in any such State, colony or possession shall not, so long as the notification continues to apply to the State, colony or possession, be deemed to emigrate within the meaning of this Act.

(*2*) The Governor General in Council may, by notification in the Gazette of India, declare that from a date to be specified a notification under sub-section (*1*) shall no longer apply to a Native State or British colony or possession therein mentioned."

Saving of notifications under section 102, Act XXI, 1883, as amended by Act XXI, 1884.

8. Every notification made under section 102 of the said Act as amended by Act XXI of 1884[1] shall be deemed to have been made under sub-section (*1*) of section 102 of the said Act as amended by the last foregoing section of this Act.

Amendment of section 105, Act XXI, 1883.

9. In section 105 of the said Act, for the word and figures "section 102" the words, figures and letter "section 103, clause (*a*), and section 104" shall be substituted.

[1] The Straits Settlements Emigration Act, 1884; the Act was repealed by the Repealing and Amending Act, 1891 (XII of 1891), printed, General Acts, Vol. VI, Ed. 1898.

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ACT No. XIX OF 1890.[1]

[*16th October, 1890.*]

An Act to amend the Indian Salt Act, 1882.[2]

XII of 1882. WHEREAS it is expedient to amend the Indian Salt Act, 1882,[2] for the purpose of regulating the traffic in Kohat salt in the Punjab; It is hereby enacted as follows:—

XII of 1882. 1. To section 3 of the Indian Salt Act, 1882,[2] the following shall be added, namely:— Addition to section 3, Act XII, 1882.

"'Kohat salt' means salt produced in the district of Kohat in the Punjab." Kohat salt.

2. After Chapter III of the said Act the following shall be inserted, namely:— Insertion of new Chapter IIIA after Chapter III, Act XII, 1882.

"CHAPTER IIIA.

"INDUS PREVENTIVE LINE.

"8A. (*1*) The Governor General in Council may, from time to time, by rule,— Power to define zones and establish chains of posts.

(*a*) define a zone of country not exceeding fifteen miles in breadth—

(*i*) along any portion of the river Indus and at such distance therefrom as he deems expedient, or

(*ii*) in any tract extending from that river to the western frontier of the Punjab,

(*b*) extend any such zone so as to include any ferry, or any portion of a railway, canal or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and

(*c*) within such a zone establish a chain of posts extending along the zone.

"(*2*) The establishment of a chain of posts under clause (*c*) of sub-section (*1*) shall be deemed to be a public purpose within the meaning of the Land Acquisition Act, 1870.[3]

X of 1870.

"8B. When a zone has been defined and a chain of posts established under Effect of defining a zone

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[1] Short title, "The Indian Salt Act (1882) Amendment Act, 1890." *See* the Indian Short Titles Act, 1897 (XIV of 1897), printed, General Acts, Vol. VI.

For Statement of Objects and Reasons, *see* Gazette of India, 1890, p. 126; for Report of the Select Committee, *see ibid*, p. 145, and for Proceedings in Council, *see ibid*, Pt. VI, pp. 124, 127 and 137. As being part of the original Act, XII of 1882, this Act is in force in Upper Burma (except the Shan States), *see* the Burma Laws Act, 1898 (XIII of 1898).

[2] Printed, General Acts, Vol. IV, Ed. 1898, p. 40.

[3] *See* now the Land Acquisition Act, 1894 (I of 1894), printed, General Acts, Vol. VI, Ed. 1898.

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and establishing a chain of posts.

section 8A, the Governor General in Council may, from time to time, by rule—

(*a*) prohibit any person, except upon such conditions as may be prescribed in the rule, from having in his possession any Kohat salt within the limits of the zone, and,

(*b*) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate the passage of traffic across such chain, and provide for the searching of all persons and things crossing or being taken across such chain."

Addition to section 25, Act XII, 1882.

3. The following shall be added to section 25 of the said Act, namely:—

"A salt-revenue-officer shall not be deemed to search or detain any person, or to seize the moveable property of any person vexatiously and unnecessarily within the meaning of clause (*b*) or clause (*c*) of the first paragraph of this section if the search is authorised by any rule under clause (*b*) of section 8B and the detention or seizure is such as is necessary for the purposes of such search."

Addition to section 27, Act XII, 1882.

4. To section 27 of the said Act the following shall be added, namely—

"Nothing in this section shall be deemed to affect Chapter IIIA of this Act or any rule under that Chapter."

5. [*Repeal of section 31 of Act XII of 1882.*] *This section and the preamble to it rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

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Act XV of 1882 (Presidency Small Cause Courts), as modified up to 1st February, 1895. 10*a.* (2*a.*)

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Regulation I of 1886 (Assam Land and Revenue), as modified up to 1st June, 1894. 13*a.* (2*a.*)

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Act XX of 1847 (Copyright), as modified up to 1st May, 1896. In Urdu. 1*a.* 3*p.* (1*a.*)

Ditto. In Nagri. 1*a.* 3*p.* (1*a.*)

Act XXXVI of 1858 (Lunatic Asylums), as modified up to 1st March, 1893. In Urdu. 1*a.* 3*p.* (1*a.*)

Act XLV of 1860 (Penal Code), as modified up to 1st January, 1893. In Urdu. R1. (5*a.*)

Act V of 1861 (Police), as modified up to 1st March, 1895. In Urdu. 2*a.* 3*p.* (1*a.*)

Ditto. In Nagri. 2*a.* 3*p.* (1*a.*)

Act VI of 1864 (Whipping), as modified up to 1st March, 1895. In Urdu. 1*a.* (1*a.*)

Act V of 1869 (Indian Articles of War), as modified up to 1st January, 1895. In English, Urdu and Nagri. Bound. R3. (5*a.*)
Ditto. Unbound. R2-8. (5*a.*)

Act VII of 1870 (Court-fees), as modified up to 1st July, 1891; with an Appendix containing Notification No. 4650, dated 10th September, 1889, reducing and remitting Court-fees, and an Index. In Urdu. 8*a.* (2*a.* 6*p.*)

Act XXIII of 1870 (Coinage), as modified up to 27th June, 1893; with an Appendix containing the Indian Coinage and Paper Currency Act, 1893, and the Notifications by the Government of India in the Finance and Commerce Department, Nos. 2662, 2663 and 2664, dated the 26th June, 1893, connected therewith. In Urdu. 1*a.* 3*p.* (1*a.*)

Act I of 1871 (Cattle-trespass), as modified up to 1st March, 1891. In Urdu. 1*a.* 9*p.* (1*a.*)

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IV—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL—*contd.*

Act V of 1871 (Prisoners), as modified up to 1st May, 1894. In Urdu. 1*a.* 9*p.* (1*a.*)

Act I of 1872 (Evidence), as modified up to 1st May, 1891. In Urdu. 8*a.* (2*a.*)

Act IV of 1872 (Punjab Laws), as modified up to 1st July, 1891. In Urdu. 2*a.* 6*p.* (1*a.* 6*p.*)

Act IX of 1872 (Contract), as modified up to 1st June, 1893. In Urdu. 12*a.* (4*a.*)

Act XV of 1872 (Christian Marriage), as modified up to 1st April, 1891. In Urdu. 4*a.* (2*a.*)

Ditto. In Nagri. 4*a.* (2*a.*)

Act I of 1877 (Specific Relief), as modified up to 1st July, 1894. In Urdu. 5*a.* (1*a.* 6*p.*)

Act III of 1877 (Registration), as modified up to 1st December, 1892. In Urdu. 4*a.* (2*a.*)

Act XV of 1877 (Limitation), as modified up to 1st December, 1892. In Urdu. 4*a.* 6*p.* (2*a.*)

Act VII of 1878 (Forests), as modified up to 1st December, 1894. In Urdu. 4*a.* (1*a.* 6*p.*)

Ditto. In Nagri. 3*a.* 9*p.* (1*a.* 6*p.*)

Act I of 1879 (Stamps), as modified up to 1st July, 1894; with Appendices containing notifications reducing and remitting stamp-duties and publishing rules under the Act. In Urdu. 10*a.* 6*p.* (3*a.*)

Act XVIII of 1879 (Legal Practitioners), as modified up to 1st May, 1896. In Urdu. 2*a.* 6*p.* (1*a.*)

Ditto. In Nagri. 2*a.* 6*p.* (1*a.*)

Act XXI of 1879 (Foreign Jurisdiction and Extradition), as modified up to 1st May, 1896. In Urdu. 1*a.* 6*p.* (1*a.*)

Ditto. In Nagri. 1*a.* 6*p.* (1*a.*)

Act XV of 1881 (Factories), as modified up to 1st April, 1891. In Urdu. 1*a.* 6*p.* (1*a.*)

Ditto. In Nagri. 1*a.* 6*p.* (1*a.*)

Act XVIII of 1881 (Central Provinces Land-revenue), as modified up to 1st January, 1895. In Urdu. 8*a.* (3*a.*)

Ditto. In Nagri. 8*a.* (2*a.*)

Act I of 1882 (Assam Labour and Emigration), as modified up to 1st May, 1893. In Urdu. 6*a.* (2*a.*)

Ditto. In Nagri. 6*a.* (2*a.*)

Act XX of 1882 (Paper Currency), as modified up to 27th June, 1883; with an Appendix containing the Indian Coinage and Paper Currency Act, 1893, and the Notifications by the Government of India in the Finance and Commerce Department, Nos. 2662, 2663 and 2664, dated the 26th June, 1893, connected therewith. In Urdu. 1*a.* 6*p.* (1*a.*)

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IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL—*contd.*

Act IX of 1883 (Central Provinces Tenancy), as modified up to 1st December, 1894. In Urdu. 4*a.* (1*a.* 6*p.*)

Ditto. In Nagri. 4*a.* (1*a.* 6*p.*)

Act IV of 1884 (Explosives), as modified up to 1st May, 1896. In Urdu. 1*a.* 3*p.* (1*a.*)

Ditto. In Nagri. 1*a.* 3*p.* (1*a.*)

Act XVIII of 1884 (Punjab Courts), as modified up to 1st May, 1894. In Urdu. 2*a.* 6*p.* (1*a.* 6*p.*)

Act XIII of 1885 (Telegraphs), as modified up to 1st March, 1893. In Urdu. 1*a.* 9*p.* (1*a.*)

Act III of 1888 (Police), as modified up to 1st March, 1893. In Urdu. 6*p.* (1*a.*)

Act IV of 1888 (Indian Reserve Forces), as modified up to 1st March, 1893. In Urdu. 3*p.* (1*a.*)

Act IV of 1889 (Merchandise Marks), as modified up to 1st June, 1891. In Urdu. 2*a.* (1*a.*)

Act VII of 1889 (Succession Certificates). In Urdu. 1*a.* 6*p.* (1*a.*)

Act X of 1889 (Ports), as modified up to 1st June, 1894. In Urdu. 5*a.* (2*a.*)

Act XIII of 1889 (Cantonments), as modified up to 1st March, 1895. In Urdu. 2*a.* 3*p.* (1*a.* 9*p.*)

Ditto. In Nagri. 3*a.* (1*a.* 9*p.*)

Act XV of 1889 (Official Secrets). In Urdu. 3*p.* (1*a.*)

Act I of 1890 (Revenue Recovery). In Urdu. 3*p.* (1*a.*)

Act VIII of 1890 (Guardians and Wards). In Urdu. 2*a.* 3*p.* (1*a.* 9*p.*)

Act IX of 1890 (Railways), as modified up to 1st May, 1896. In Urdu. 8*a.* (2*a.*)

Ditto. In Nagri. 8*a.* (2*a.*)

Act XI of 1890 (Prevention of Cruelty to Animals). In Urdu. 3*p.* (1*a.*)

Act V of 1891 (Ports Act Amendment). In Urdu. 3*p.* (1*a.*)

Act VI of 1892 (Limitation Act and Civil Procedure Code Amendment). In Urdu. 3*p.* (1*a.*)

Act IV of 1893 (Partition). In Urdu. 3*p.* (1*a.*)

Act VIII of 1893 (Coinage and Paper Currency Acts Amendment). In Urdu. 3*p.* (1*a.*)

Ditto. In Nagri. 3*p.* (1*a.*)

Act X of 1893 (Excise Act Amendment). In Urdu. 3*p.* (1*a.*)

Ditto. In Nagri. 3*p.* (1*a.*)

Act I of 1894 (Land Acquisition). In Urdu. 2*a.* 3*p.* (1*a.* 6*p.*)

Ditto. In Nagri. 1*a.* 6*p.* (1*a.* 6*p.*)

Act III of 1894 (Criminal Procedure and Penal Codes Amendment). In Urdu. 3*p.* (1*a.*)

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IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL—*concld.*

Act V of 1894 (Civil Procedure Code Amendment). In Urdu. 3*p.* (1*a.*)

Ditto. In Nagri. 3*p.* (1*a.*)

Act VIII of 1894 (Tariff), as modified up to 1st March, 1896. In Urdu. 4*a.* 9*p.* (1*a.*)

Ditto. In Nagri. 4*a.* 3*p.* (2*a.*)

Act IX of 1894 (Prisons). In Urdu. 1*a.* 6*p.* (1*a.*)

Ditto. In Nagri. 1*a.* 6*p.* (1*a.*)

Act X of 1894 (Criminal Procedure Code Amendment). In Urdu. 3*p.* (1*a.*)

Act XVI of 1894 (Tariff Act Amendment). In Urdu. 2*a.* 6*p.* (1*a.* 6*p.*)

Ditto. In Nagri. 2*a.* (1*a.*)

Act XVII of 1894 (Cotton-duties). In Urdu. 1*a.* (1*a.*)

Ditto. In Nagri. 1*a.* (1*a.*)

Act IV of 1895 (Criminal Procedure Code Amendment). In Urdu. 3*p.* (1*a.*)

Ditto. In Nagri. 3*p.* (1*a.*)

Act VII of 1895 (Civil Procedure Code and Punjab Laws Act Amendment). In Urdu. 3*p.* (1*a.*)

Ditto. In Nagri. 3*p.* (1*a.*)

Act XII of 1895 (Companies—Memorandum of Association). In Urdu. 3*a.* (1*a.*)

Act XIV of 1895 (Pilgrim Ships). In Urdu. 1*a.* 3*p.* (1*a.*)

Act II of 1896 (Cotton duties). In Urdu. 1*a.* 3*p.* (1*a.*)

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